2-9-87
Vol. 52 No. 26
Pages 3997-4124

federal register

Monday
February 9, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Portland, OR, Los Angeles, CA, San Diego, CA, and Houston, TX, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

PORTLAND, OR

WHEN: February 17; at 9 am.
WHERE: Bonneville Power Administration Auditorium, 1002 N.E. Holladay Street, Portland, OR.
RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:

Portland 503-221-2222
Seattle 206-442-0570
Tacoma 206-383-5230

LOS ANGELES, CA

WHEN: February 18; at 1:30 pm.
WHERE: Room 8544, Federal Building, 300 N. Los Angeles Street, Los Angeles, CA.
RESERVATIONS: Call the Los Angeles Federal Information Center, 213-894-3800

SAN DIEGO, CA

WHEN: February 20; at 9 am.
WHERE: Room 2S31, Federal Building, 880 Front Street, San Diego, CA.
RESERVATIONS: Call the San Diego Federal Information Center, 619-293-6030

HOUSTON, TX

WHEN: March 10; at 9 am.
WHERE: Room 4415, Federal Building, 515 Rusk Avenue, Houston, TX.
RESERVATIONS: Call the Houston Federal Information Center on the following local numbers:

Houston 713-229-2552
Austin 512-472-5495
San Antonio 512-224-4471
New Orleans 504-589-6696

Contents

Federal Register

Vol. 52, No. 26

Monday, February 9, 1987

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

14 CFR
39 (3 documents)..... 3997–3999
71..... 4079
Proposed Rules:
39..... 4021

17 CFR
Proposed Rules:
9..... 4021

18 CFR
Proposed Rules:
Ch. I..... 4035

20 CFR
404..... 4001
416..... 4001

27 CFR
Proposed Rules:
9..... 4036

33 CFR
Proposed Rules:
95..... 4116
165..... 4039

40 CFR
712..... 4079
721..... 4079

44 CFR
67..... 4005

46 CFR
Proposed Rules:
550..... 4040

47 CFR
2..... 4016
15..... 4016
20..... 4016
22..... 4016
25 (2 documents)..... 4016, 4017
73 (2 documents)..... 4018
90..... 4016
Proposed Rules:
90..... 4041

48 CFR
Proposed Rules:
9..... 4082
15..... 4084
31..... 4084
45..... 4086
52 (3 documents)..... 4082, 4084, 4086

50 CFR
642..... 4019
652 (2 documents)..... 4019, 4020

Rules and Regulations

Federal Register
Vol. 52, No. 26
Monday, February 9, 1987

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-02-AD; Amdt. 39-5549]

Airworthiness Directives; de Havilland DHC-6 Models 1, 100, 200, and 300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to de Havilland DHC-6 Model 1, 100, 200, and 300 airplanes which supersedes AD 84-07-07, Amendment 39-4841. This superseded AD required a repetitive check every 50 hours time-in-service (TIS) of the engagement of the forward leg of a folding utility seat with the floor rail. Subsequent to the issuance of AD 84-07-07, the manufacturer, de Havilland, deemed it necessary to require the same repetitive check each time the seat is moved from stowed to deployed position, to identify those seat support assemblies associated with the various airplane serial numbers, and to modify the "Douglas" cargo tie-down track. Reports and inspection findings indicate that the seat legs may be dislodged from the mounting rails during normal usage. The inspections and modifications will eliminate hazards to seat occupants resulting from a loss or inadequately restrained seat during a crash.

EFFECTIVE DATE: February 13, 1987.

Compliance: As indicated in the body of the AD.

ADDRESSES: de Havilland Service Bulletin (S/B) No. 6/447, Revision C, dated May 16, 1986, applicable to this AD may be obtained from de Havilland Aircraft Company of Canada, A Division of Boeing of Canada Limited, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Lester Lipsius, Aerospace Engineer, Airframe Branch, ANE-172, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; Telephonc (516) 791-6220.

SUPPLEMENTARY INFORMATION: The British CAA reported an occurrence in a de Havilland DHC-6 Model airplane where the utility seat front leg was not engaged in the seat rail, presenting a hazard to the seat occupants in the event of a crash. As a result, de Havilland issued Service Bulletin No. 6/447, which provided for inspection and the optional installation of a positive locking mechanism (Modification No. 6/1828) to prevent disengagement of the seat forward leg from the seat rail. As a result, the Department of Transport, Canada (DOT-Canada), who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada, issued Airworthiness Directive No. CF-83-25 dated September 19, 1983. The FAA found that the condition addressed by this Service Bulletin was an unairworthy condition likely to exist on airplanes certificated for operation in the United States and issued AD 84-07-07, which required an initial and repetitive inspection of the side folding utility seat forward legs to ensure security of the seat to the rail and provide for the installation of a positive locking mechanism to prevent disengagement of the seat forward leg from the seat rail.

Subsequently, de Havilland determined that additional checks are necessary to ensure seat forward leg engagement with the floor rail each time the seat is moved from stowed to extended position, that these checks may be accomplished by a flightcrew member, and introduced rework for the optional "Douglas" cargo tie-down rack which may exist on certain airplanes. As a result, de Havilland has issued S/B 6/447, Revision A, dated February 3, 1984, which identified these seat support assemblies associated with the various airplane serial numbers, and incorporated additional accomplishment instructions and modification kits; Revision B datcd August 31, 1984, which incorporated rework of the optional "Douglas" cargo tie-down tracks which may exist on certain airplanes; and Revision C dated May 16, 1986, to require inspection of the forward leg for security of attachment to the floor rails each time the seat is moved from stowed to deployed position, until Modification No. 6/1828 is incorporated. The Canadian authorities have issued AD CF-83-25R2 on this subject, which refers to Revision B of de Havilland S/B No. 6/447, or later revisions approved by the Director, Airworthiness Branch. This Canadian AD specifies a repetitive check not to exceed 100 hours TIS. While the Canadian AD shows relief in the repetitive check interval from 50 hours to 100 hours, this superseding AD to AD 84-07-07 maintains the 50 hour repetitive check interval since no additional substantiation has been presented to the FAA for the longer inspection interval.

DOT-Canada, who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada, has classified this service bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under DOT-Canada registration, this action has the same effect as an AD on airplanes certified for operation in the United States.

The FAA relies upon the certification of DOT-Canada combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of S/B 6/447, Revision C, dated May 16, 1986, and the mandatory classification of this service bulletin by DOT-Canada. Based on the foregoing, the FAA has determined that the condition addressed by de Havilland Service Bulletin No. 6/447, Revision C, dated May 16, 1986, is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States.

Therefore, an AD superseding AD 84-07-07 is being issued, which requires initial and repetitive checks of the engagement of the forward leg of the utility seat with the floor rail at intervals not to exceed 50 hours TIS and a check each time the seat is moved from stowed to deployed position until incorporation of the optional positive locking Modification No. 6/1828, and modification of the "Douglas" cargo tie-down tracks on de Havilland DHC-6 Models 1, 100, 200, and 300 airplanes.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption **"ADDRESSES"** at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

De Havilland: Applies to DHC-6 Models 1, 100, 200, and 300 airplanes certificated in any category, when fitted with side folding cabin utility seats.

Compliance: Required as indicated, unless already accomplished.

To prevent disengagement of the utility seat forward legs from the floor mounting rail, accomplish the following:

(a) Within 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished within the last 25 hours TIS, and at subsequent intervals not to exceed 50 hours TIS thereafter, attempt to move the lower end of each forward leg sideways into the open part of the keyhole slot using as much force as can be exerted by hand. If the leg can be removed from the keyhole slot, remove the seat from service until Modification No. 6/1828 is incorporated in accordance with the ACCOMPLISHMENT INSTRUCTIONS of de Havilland Service Bulletin (S/B) No. 6/447, Revision C, dated May 16, 1986.

(b) Repeat the check in paragraph (a) of this AD each time the seats are moved from stowed to deployed position.

(c) The check required by paragraph (b) of this AD may be accomplished by a flightcrew member, certificated under FAR 61 or FAR 63 rules, briefed on the procedure.

(d) When Modification No. 6/1828 is incorporated in accordance with the ACCOMPLISHMENT INSTRUCTIONS of de Havilland S/B No. 6/447, Revision C, on each seat, subsequent checks required by this AD are no longer required on that seat.

(e) An equivalent means of compliance may be used when approved by the Manager, New York Aircraft Certification Office, Federal Aviation Administration, ANE-170, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

This AD supersedes AD 84-07-07, Amendment 39-4841.

This amendment becomes effective on February 13, 1987.

Issued in Kansas City, Missouri, on January 29, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-2582 Filed 2-6-87; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 86-CE-41-AD; Amdt. 39-5548]

Airworthiness Directives; de Havilland Model DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to de Havilland Model DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 airplanes, which requires initial and repetitive inspections of both wing support strut assemblies for corrosion and, if necessary, replacement before further flight. The amendment is prompted by a report of a DHC-6 airplane that had both wing struts affected by corrosion in the beam flanges. Severely corroded wing struts could fail in flight, resulting in wing collapse. The required inspections will detect any corrosion before it can lead to failure of the wing struts.

EFFECTIVE DATE: March 16, 1987.

Compliance: As prescribed in the body of the AD.

ADDRESSES: De Havilland Service Bulletin (S/B) No. 6/474, Revision A, dated March 28, 1986, applicable to this AD may be obtained from the de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; Telephone (416) 633-7310. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Lester Lipsius, Airframe Branch, ANE-172, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581; Telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspection for corrosion of both wing lift strut beam flanges enclosed by the skins on strut assemblies, P/N C6W1005-7 and P/N C6W1005-8, and replacement if necessary, before further flight, on all de Havilland DHC-6 airplanes, was published in the **Federal Register** on October 9, 1986 (51 FR 36229). The proposal resulted from a report that one Canadian DHC-6 airplane had corrosion in the beam flange enclosed by the skins of both wing support struts. Consequently, de Havilland issued S/B No. 6/474, "Wings—Wing Struts Special Inspection for Internal Beam Corrosion," dated June 14, 1985, and Revision A, dated March 28, 1986, which requires inspection for corrosion in the beam flanges of both wing support struts on all DHC-6 airplanes.

Transport Canada, who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada, made this service bulletin and the actions recommended therein by the manufacturer mandatory by issuance of Transport Canada AD CF-85-14, to assure the continued airworthiness of the affected airplanes. On airplanes operated under Canadian registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of Transport Canada combined with FAA review of pertinent documentation in finding compliance of the designs of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design

certificated for operation in the United States. The FAA examined the available information related to the issuance of S/B No. 6/474, Revision A, dated March 28, 1986, and the issuance of AD CF-85-14 by Transport Canada, and concluded that the condition addressed by S/B No. 6/474 was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change except for some minor editorial clarifications.

The FAA has determined that this regulation involves approximately 194 de Havilland DHC-6 series airplanes in the United States registry at an approximate annual cost of $640 for inspection of each airplane. The total cost for each inspection of the fleet is estimated to be $124,160 to the private sector. The cost of compliance with the AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

De Havilland: Applies to Model DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated, after the effective date of this AD, unless already accomplished.

To prevent failure of the wing support struts due to corrosion, accomplish the following:

(a) Visually inspect each wing support strut for corrosion in accordance with the "ACCOMPLISHMENT INSTRUCTIONS" in de Havilland Service Bulletin (S/B) No. 6/474, dated June 14, 1985, Revision A, dated March 28, 1986, as follows:

(1) For aircraft that have accumulated 5,000 or more hours time-in-service (TIS) or are four and one half or more years old on the effective date of this AD, accomplish the inspection within the next 1,000 hours TIS or six months, whichever occurs first, after the effective date of this AD.

(2) For aircraft that have accumulated less than 5,000 hours TIS and are less than four and one half years old on the effective date of this AD, accomplish the inspection before the accumulation of 6,000 hours TIS or five years, whichever occurs first.

(3) For all airplanes, reinspect at intervals not to exceed 6,000 hours TIS or five years, whichever occurs first, following the previous inspection accomplished in accordance with this AD.

(b) If the inspections specified in paragraph (a) of this AD show moderate or severe corrosion anywhere on the wing support struts, or any corrosion within 20 inches from either end of the wing support struts, replace the affected support strut prior to further flight.

(c) If the inspections specified in paragraph (a) of this AD show light corrosion in areas other than 20 inches from either end of the struts, remove the corrosion within 30 days.

Note.—Advisory Circular (AC) 43-4, discusses corrosion evaluation, degree of damage, and rework procedures.

(d) An alternate method of compliance, which provides an equivalent level of safety, may be used if approved by the Manager, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(f) Upon submission of substantiating data by an owner or operator, through an FAA Maintenance Inspector, the Manager, New York Aircraft Certification Office, FAA, New England Region, may adjust the compliance times in this AD.

All persons affected by this directive may obtain copies of the document referred to herein upon request to The de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on March 16, 1987.

Issued in Kansas City, Missouri, on January 29, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-2583 Filed 2-6-87; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 86-ANE-20; Amdt. 39-5519]

Airworthiness Directives; Pratt & Whitney (PW) JT8D-209, -217, and -217A Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires the removal and replacement of stage 5 low pressure compressor (LPC) blades on certain PW JT8D-200 series engines. A stage 5 LPC blade flutter boundary has been identified in the engine operating envelope within the LPC rotor speed redline limit. The AD is needed to prevent flutter induced high cycle fatigue (HCF) failure of stage 5 LPC blades which could result in the loss of engine power.

EFFECTIVE DATES: February 16, 1987.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of February 16, 1987.

ADDRESSES: The applicable service bulletin (SB) may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the SB is contained in Rules Docket Number 86-ANE-20, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Jones, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7121.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a

new AD requiring the removal and replacement of stage 5 LPC blades on certain PW JT8D–200 series engines was published in the **Federal Register** on June 13, 1986, (51 FR 21567). The proposal was developed when the FAA determined that stage 5 LPC blade flutter may be experienced on certain JT8D–200 series engines in the engine operating envelope within the LPC rotor speed redline limit. Blade flutter could result in blade fracture and the loss of engine power. Blade flutter and subsequent failure have been demonstrated during development testing at PW. There have been no failures in service.

The FAA has re-evaluated the data and determined that the compliance period as proposed in the notice of proposed rulemaking (NPRM) can be extended without compromising safe engine operation. It is significant to note that there has not been a stage 5 blade fracture in service due to flutter in over 4.3 million flight hours. In the unlikely event of a blade fracture due to flutter, the failure will be contained with no adverse consequences other than potential thrust loss or inflight shutdown. In addition, performance limitations introduced by Appendix 10 to the McDonnell Douglas Flight Manual prohibit engine operation within the blade flutter boundary, thereby preventing blade fracture due to flutter during normal operation. The compliance period to install the flutter resistant blade will therefore be extended from October 30, 1988 to July 30, 1990.

Since this condition is likely to exist or develop on other engines of the same type design, the AD requires replacement of existing stage 5 LPC blades with an improved durability blade in accordance with PW SB 5618, dated November 26, 1985.

Interested persons have been afforded the opportunity to participate in the making of this amendment, and due consideration has been given to all relevant data and comments received. Six comments were received concerning the proposed rule. Following consideration of those comments, it was determined that the proposal would be changed by extending the compliance period.

Six commenters requested an extension to the compliance deadline to allow for installation of a new flutter and foreign object damage resistant blade and strengthened disk. One of those commenters also questioned the justification for the New England Region NPRM in light of a Northwest Mountain NPRM which proposes engine and airplane performance limitations.

As stated above, the FAA has re-evaluated the data and determined that the compliance period as proposed in the NPRM can be extended without compromising safe operation of the engine. Although the proposed engine and airplane performance restrictions would prohibit engine operation within the blade flutter boundary, a blade flutter condition exists within the engine operating envelope and the LPC rotor speed redline limit that does not comply with the requirements of FAR Part 33. The rulemaking proposed by the Northwest Mountain Region is considered an interim measure. This rulemaking provides terminating action and will ultimately remove from service those blades susceptible to flutter and restore compliance with FAR Part 33.

Conclusion

The FAA has determined that this regulation involves 674 PW JT8D–200 series engines at an approximate cost of 12.6 million dollars. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since this regulation affects only operators using McDonnell Douglas MD–80 series aircraft in which the JT8D–200 series engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT8D–209, –217, and –217A turbofan engines.

Compliance is required on or before July 30, 1990, unless already accomplished.

To prevent failure of a stage 5 low pressure compressor (LPC) blade, remove from service LPC blades, Part Number 778505, and replace with serviceable blades in accordance with PW Service Bulletin (SB) 5618, dated November 26, 1985, or FAA approved equivalent.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

PW SB 5618, dated November 26, 1985, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457. This document also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 86–ANE–20, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

This amendment becomes effective on February 16, 1987.

Issued in Burlington, Massachusetts, on January 13, 1987.

Clyde DeHart, Jr.,

Acting Director, New England Region.

[FR Doc. 87–2585 Filed 2–6–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Limit on Future Effect of Applications and Related Changes in Appeals Council Procedures

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final regulations revise our rules on the validity of an application filed before the first month the claimant meets all the requirements for Old-Age, Survivors, and Disability Insurance (OASDI) benefits under Title II of the Social Security Act (the Act). (Corresponding final regulations for the Supplemental Security Income (SSI) program under Title XVI of the Act were published on April 21, 1986 (51 FR 13489) and effective May 1, 1986.) These final regulations also revise our rules on acceptance of evidence in administrative appeals for both the OASDI and SSI programs. The changes are based on section 306 of the Social Security Disability Amendments of 1980.

Under these final regulations, if a person files a Title II application before the first month in which all the requirements for benefits are met, the application will be a valid application only if all the requirements are met on or before the date the administrative law judge (ALJ) makes a hearing decision. If there is no ALJ hearing decision (for example, the claimant does not request an ALJ hearing or the request is dismissed), the claim will be allowed only if the claimant meets all the requirements on or before the date a final determination is made. We are also changing our regulations on the administrative appeals process to provide that, in general, the Appeals Council (AC) will, in determining whether to review or in reviewing ALJ hearing decisions, only consider additional evidence which relates to the period on or before the date of the ALJ hearing decision. There are no changes in the final regulations which affect the AC's consideration of additional evidence in Title XVI cases not based on an application for benefits (e.g., suspension or termination of benefits). The regulations also do not change the AC's authority to remedy a defect in the administrative proceedings by remand to the ALJ. The right of the claimant to obtain consideration of new and additional evidence at the reconsideration or hearing level is also not affected by this change in AC procedures. Additional background information may be found in the preamble.

EFFECTIVE DATE: These rules are effective February 9, 1987.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7452.

SUPPLEMENTARY INFORMATION:

Background

These final regulations affect Old-Age, Survivors, and Disability Insurance (OASDI) and Supplemental Security Income (SSI) benefits under the Social Security Act (the Act), but not special age 72 benefits. Our existing regulations on applications for OASDI benefits (including applications for a period of disability) provide that an application filed before the first month in which the claimant meets all the requirements for benefits is valid until a final decision on the claim is made by us or a court. If the claimant meets all the requirements before a final decision on the application is made, the regulations being amended treat the application as if it had been filed in the month the claimant first met all the requirements. On April 21, 1986, we promulgated final regulations for the SSI program at 51 FR 13489, including revisions to 20 CFR 416.330 which are consistent with the changes in these final OASDI regulations on applications. The revisions to 20 CFR 416.330 became effective May 1, 1986.

For a claimant dissatisfied with our initial determination, SSA's administrative appeals process provides generally for (1) reconsideration of the initial determination, (2) a hearing before an ALJ, and (3) review by the Appeals Council. Section 306 of Pub. L. 96–265, the Social Security Disability Amendments of 1980, limits the prospective effect of applications for OASDI benefits. (*Exception:* An application for special age 72 payments must still be filed no more than 3 months before the first month all requirements are met.) Under section 306, if a person files an application for OASDI benefits after June 30, 1980, and appeals our determination on it beyond the ALJ hearing level, the claimant must show that all the requirements for the benefits were met before the ALJ hearing decision in order to have us treat the application as if it had been filed in the month all the requirements were first met. If the claimant first meets all requirements after the date of the ALJ hearing decision, he or she must file a new application in order to get benefits.

Congress did not amend the SSI title (Title XVI) of the Act because, unlike the OASDI title (Title II), Title XVI leaves the period of validity for an application to be determined through regulations. However, the Senate Finance Committee report on Pub. L. 96–265 (S. Rep. No. 96–408, 96th Cong., 1st Sess. 57 (1979)) states that the Committee expects us to apply the rules required by section 306 to SSI applications as well as to OASDI applications. Consequently, under the Secretary's broad rulemaking authority, we have adopted the same rules for Title XVI applications as for Title II applications. However, since reestablishment of eligibility for Title XVI benefits during the course of an appeal does not require the filing of a new application, the AC will continue to consider evidence pertaining to any period before a final determination in Title XVI cases not based on an application (e.g., suspension and termination cases).

In proposing the provisions that became section 306 of Pub. L. 96–265, the House of Representatives indicated that its purpose was to permit the Secretary to issue regulations limiting the introduction of evidence after the ALJ hearing decision. Under the regulations being amended, the AC, in deciding whether to review an ALJ hearing decision and in actually reviewing it, considers any new and material evidence submitted.

The Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on May 16, 1983 at 48 FR 21967–21970 cited as one indication of Congressional intent the statement by the House Committee on Ways and Means that "the amendment . . . would allow the issuance of regulations to foreclose the introduction of new evidence with respect to a previously filed application after the decision is made at the administrative ALJ hearing, but would not affect remand authority to remedy an insufficiently documented case or other defect." (H.R. Rep. No. 96–100, 96th Cong., 1st Sess. 14 (1979).)

In accordance with what we considered as Congressional intent, the proposed regulations would have modified the general procedures under which the AC would consider additional evidence in connection with its review of an ALJ hearing decision. Under the proposed regulations, the AC would not consider any additional evidence submitted after the date of the ALJ hearing decision. The proposed regulations would not have permitted

the AC to consider additional evidence in any circumstances, even where the evidence related to the period ending with the date of the ALJ hearing decision. In these cases, the claimant would have been given the option of either filing a new application if he or she believed that the evidence showed a new or worsened condition or of submitting the evidence to the ALJ for consideration of reopening of the hearing decision under the existing rules on reopening and revising determinations and decisions (20 CFR 404.987ff and 416.1487ff). The proposed regulations would have had no effect on the claimant's ability to submit new or additional evidence at either the reconsideration or ALJ hearing levels.

In view of the comments received in response to the NPRM, we have again reviewed the legislative history concerning section 306 of Pub. L. 96–265. We believe that the legislative history leaves us some flexibility concerning the degree to which the record should be closed to the receipt of additional evidence after the issuance of an ALJ hearing decision. In addition, the language of section 306 simply amends provisions of Title II of the Act concerning the prospective effect of certain OASDI applications to provide that the prospective life of an application filed prior to the claimant's meeting all the other entitlement requirements will end as of the date of the ALJ hearing decision. The effect of the statutory language, under which we have been operating with respect to OASDI applications filed after June 30, 1980, is that the AC will not consider additional evidence unless it relates to the period through the date of the ALJ hearing decision. Since the life of the application ends as of the date of the ALJ hearing decision, any evidence which indicates that entitlement begins subsequent to that date will not establish entitlement without the filing of a new application. In those cases the AC does not consider the evidence but advises the claimant to file a new application. However, it continues to process the request for review of the ALJ hearing decision.

Based on the above considerations, we have decided to promulgate final regulations under which the record will not be completely closed to AC consideration of additional evidence in connection with the review of an ALJ hearing decision. The only change we are making in existing regulations concerning the consideration of additional evidence by the AC is that the AC will consider only evidence relating to the period on or before the date of the ALJ hearing decision. That change is mandated, for Title II claims based on an application for benefits, by the language of section 306. Although not addressed by that provision, the reestablishment of entitlement to Title II benefits, where, for example, a claimant asserts a new disabling impairment arising subsequent to the ALJ hearing, generally would require the filing of a new application. Accordingly, we will apply the limitation on the AC consideration of new evidence to all Title II cases, including termination cases.

The Final Regulations

The final regulations provide that if an application for OASDI benefits, including a period of disability, is filed before the applicant satisfies the requirements for the benefits, the application continues to be valid until the ALJ hearing decision is issued. However, if there is no ALJ hearing decision (for example, the claimant does not request a hearing or the hearing request is dismissed under § 404.957), the application continues to be valid only until we make a final determination on the application. Thus, if the claimant first meets all the requirements for entitlement after the date of the ALJ hearing decision, he or she would have to file a new application to establish entitlement.

Under the final regulations, in all Title II cases and in Title XVI cases in which it is reviewing a decision based upon an application for benefits, the AC will only consider additional evidence which relates to the period on or before the date of the ALJ hearing decision. For example, if the AC receives evidence of a new or worsened condition which relates to a period after that date, it will return the evidence to the claimant and advise the claimant that he or she may file a new application if he or she believes that he or she became entitled based on that evidence. The AC will also advise the claimant that if a new application is filed within 60 days of the date of the AC's notice for Title XVI cases, or within 6 months of the date of the notice for Title II cases, the request for review will be considered as a written statement indicating an intent to claim benefits. In such cases, the date of the request for review will be used to establish the filing date for the subsequent application. Thus, cases involving any potential loss of benefits because of the policy of closing the record should seldom, if ever, occur. Processing of the new application will proceed while the AC is reviewing the ALJ hearing decision. In Title XVI cases not based on an application for benefits (e.g., cases involving the suspension or termination of benefits), eligibility can be reestablished without the filing of a new application while an appeal is pending. (20 CFR 416.305) In these cases, there will continue to be no restriction on the AC consideration of additional evidence.

These changes have no effect on the consideration of new or additional evidence either at the reconsideration or ALJ hearing levels. At either of these levels, the claimant can still obtain consideration of any material additional evidence and receive a completely new and independent determination or decision based on the entire record, including the additional evidence.

Comments Received Following Publication of Notice of Proposed Rulemaking

In order to obtain the public's views and comments before proceeding with these amendments, we published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on May 16, 1983 (48 FR 21967–21970). The public was invited to submit comments pertaining to the proposed amendments within a period of 60 days from the date of publication of the notice. We received comments from 55 commenters. The comments were primarily from attorneys in private practice who indicated that they represented claimants and from legal service organizations. The comments received with regard to the proposed rule under which the AC would not consider additional evidence under any circumstances were universally unfavorable. The majority of the commenters believed that the proposed regulations went beyond the intent of Congress in enacting section 306. These commenters believed that the provision was only intended to restrict AC consideration of evidence of a new or worsened condition which might establish entitlement subsequent to the date of the ALJ hearing decision, but not to restrict the AC from considering evidence that did relate to the period ruled on in the ALJ hearing decision. Our experience with cases at the AC level has shown that the bulk of the evidence submitted in connection with a request for AC review of an ALJ hearing decision does relate to the period ruled on in the ALJ hearing decision.

Other comments were to the effect that the proposed regulations were an attempt to restrict the disability program and make it more difficult for claimants to establish their claims. That was not our intent. Other commenters pointed out that the courts could still remand

cases to the Secretary of Health and Human Services for consideration of the additional evidence which the proposed regulations in the NPRM prevented the AC from considering. Other commenters proposed that we should permit the AC to accept additional evidence for "good cause." The comments were almost entirely based on the completely closed record regulations proposed in the NPRM and either objected to or proposed no limitations to those regulations. We believe that our decision not to promulgate final regulations which would completely close the record resolves the specific concerns raised by the commenters.

As indicated in the "Final Regulations" section, on the basis of a review of the legislative history and the comments received, we have revised the proposed regulations so that the final regulations do not completely close the record to consideration of additional evidence in connection with the review of an ALJ hearing decision. Under the final regulations, the AC will only consider additional evidence which relates to the period on or before the date of the ALJ hearing decision. If the AC receives evidence of a new or worsened condition relating to a later period, it will return the evidence to the claimant and advise the claimant that he or she can file a new application if he or she believes that he or she would be entitled based on that evidence.

The AC will also advise the claimant that if a new application is filed within 60 days of the AC's notice for Title XVI cases, or within 6 months of the date of the notice for Title II cases, the request for review will be considered as a written statement indicating an intent to claim benefits. In such cases, the date of the request for review will be used to establish the filing date for the subsequent application. Processing of the subsequent application will proceed while the AC is reviewing the hearing decision.

In Title XVI cases not based on an application for benefits (e.g., cases involving suspension or termination of benefits), the AC will consider additional evidence regardless of whether it relates to the period ruled on by the ALJ or to a subsequent period. The basis for this distinction is that eligibility for Title XVI benefits can be reestablished during the course of an appeal without the filing of a new application. In contrast, reestablishment of entitlement under Title II generally requires the filing of a new application.

Effective Dates

The statutory amendment is effective with respect to OASDI applications filed after June 30, 1980. An OASDI application filed before July 1, 1980, is valid until the final decision on it is made, even if this occurs after June 30, 1980. The effective date of the rule on the prospective life of SSI applications, however, was May 1986, the month following the month of publication of the final regulations (51 FR 13489, April 21, 1986). For SSI claims, this means that only applications filed on or after May 1, 1986 are subject to the provisions limiting the prospective life of applications. If someone filed applications under both programs between June 30, 1980, and May 1, 1986, the OASDI application is subject to the new rule on prospective life, while the SSI application is still subject to the old rule.

With respect to the changes in AC procedures, they have been in effect for OASDI applications under the 1980 statutory amendments. Specifically, the AC is no longer permitted to consider evidence relating to the time period following the ALJ hearing decision in situations involving Title II applications filed after June 30, 1980. The AC procedures with regard to cases involving SSI applications will affect applications filed on or after the effective date of these final regulations.

The changes in the regulations governing Title II applications (20 CFR Part 404, Subpart G) and the Title II administrative review process (20 CFR Part 404, Subpart J) also affect entitlement to Medicare benefits. Under 20 CFR 404.601, persons wishing to become entitled to Medicare benefits are referred to the provisions of Subpart G governing Title II applications "[s]ince the application form and procedures for filing a claim under this subpart are the same as those used to establish entitlement to Medicare benefits under 42 CFR Part 405." Except as specified in 42 CFR 405.701ff, the provisions of Subpart J which govern the Title II administrative review process are expressly made applicable to matters involving entitlement to Medicare benefits under 42 CFR 405.701(c).

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These final regulations impose no reporting/recordkeeping requirements that are subject to OMB clearance.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because these rules only affect individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 13.714, Medical Assistance Program; 13.800, Medicare—Hospital Insurance; 13.801, Medicare—Supplementary Medical Insurance; 13.802, Social Security—Disability Insurance; 13.803, Social Security—Retirement Insurance; 13.805, Social Security—Survivors Insurance; and 13.807, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-age, survivors and disability insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled, Public assistance programs, Social Security Administration, Supplemental Security Income (SSI).

Dated: October 7, 1986.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: November 21, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 404—[AMENDED]

Parts 404 and 416 of Chapter III of 20 CFR are amended as follows:

Subpart G—[Amended]

1. The authority citation for Subpart G of Part 404 is revised to read as follows, and all other authority citations which appear throughout Subpart G are removed:

Authority: Secs. 202(j)(2), 205, and 1102 of the Social Security Act, as amended; 94 Stat. 457, 53 Stat. 1368 and 49 Stat. 647, as amended; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 402(j)(2), 405, 1302 and 5 U.S.C. Appendix.

2. Section 404.620(a) is revised to read as follows:

§ 404.620 Filing before the first month you meet the requirements for benefits.

(a) *General rule.* If you file an application for benefits (except special age 72 payments) before the first month you meet all the other requirements for entitlement, the application will remain in effect until we make a final

determination on your application unless there is an administrative law judge hearing decision on your application. If there is an administrative law judge hearing decision, your application will remain in effect until the administrative law judge hearing decision is issued.

(1) If you meet all the requirements for entitlement while your application is in effect, we may pay you benefits from the first month that you meet all the requirements.

(2) If you first meet all the requirements for entitlement after the period for which your application was in effect, you must file a new application for benefits. In this case, we may pay you benefits only from the first month that you meet all the requirements based on the new application.

* * * * *

Subpart J—[Amended]

3. The authority citation for Subpart J of Part 404 is revised to read as follows, and all other authority citations which appear throughout Subpart J are removed:

Authority: Secs. 201, 204, 205, and 1102 of the Social Security Act, as amended, sec. 5 of Reorganization Plan No. 1 of 1953, sec. 6 of Pub. L. 98-460; 49 Stat. 647, 53 Stat. 1368, 67 Stat. 631, and 86 Stat. 1475; 42 U.S.C. 401, 404, 405, 1302 and 5 U.S.C. Appendix.

4. The third sentence of § 404.900(b) (published at 51 FR 300, January 3, 1986) is revised to read as follows:

§ 404.900 Introduction.

* * * * *

(b) *Nature of the administrative review process.* * * * Subject to the limitations on Appeals Council consideration of additional evidence (see §§ 404.970(b) and 404.976(b)), we will consider at each step of the review process any information you present as well as all the information in our records. * * *

5. Section 404.970(b) is revised to read as follows:

§ 404.970 Cases the Appeals Council will review.

* * * * *

(b) If new and material evidence is submitted, the Appeals Council shall consider the additional evidence only where it relates to the period on or before the date of the administrative law judge hearing decision. The Appeals Council shall evaluate the entire record including the new and material evidence submitted if it relates to the period on or before the date of the administrative law judge hearing decision. It will then review the case if it finds that the administrative law judge's action, findings, or conclusion is contrary to the weight of the evidence currently of record.

6. Section 404.976(b) is revised to read as follows:

§ 404.976 Procedures before Appeals Council on review.

* * * * *

(b) *Evidence.* (1) The Appeals Council will consider all the evidence in the administrative law judge hearing record as well as any new and material evidence submitted to it which relates to the period on or before the date of the administrative law judge hearing decision. If you submit evidence which does not relate to the period on or before the date of the administrative law judge hearing decision, the Appeals Council will return the additional evidence to you with an explanation as to why it did not accept the additional evidence and will advise you of your right to file a new application. The notice returning the evidence to you will also advise you that if you file a new application within 6 months after the date of the Appeals Council's notice, your request for review will constitute a written statement indicating an intent to claim benefits in accordance with § 404.630. If a new application is filed within 6 months of this notice, the date of the request for review will be used as the filing date for your application.

(2) If additional evidence is needed, the Appeals Council may remand the case to an administrative law judge to receive evidence and issue a new decision. However, if the Appeals Council decides that it can obtain the evidence more quickly, it may do so, unless it will adversely affect your rights.

* * * * *

7. Section 404.979 is revised to read as follows:

§ 404.979 Decision of Appeals Council.

After it has reviewed all the evidence in the administrative law judge hearing record and any additional evidence received, subject to the limitations on Appeals Council consideration of additional evidence in §§ 404.970(b) and 404.976(b), the Appeals Council will make a decision or remand the case to an administrative law judge. The Appeals Council may affirm, modify or reverse the administrative law judge hearing decision or it may adopt, modify or reject a recommended decision. A copy of the Appeals Council's decision will be mailed to the parties at their last known address.

PART 416—[AMENDED]

Subpart N—[Amended]

8. The authority citation for Subpart N of Part 416 is revised to read as follows, and all other authority citations which appear throughout Subpart N are removed:

Authority: Secs. 205, 1102, 1631, 1631(c), 1631(d) and 1633 of the Social Security Act, as amended, sec. 6 of Pub. L. 98-460; 49 Stat. 647, as amended, 53 Stat. 1368, 86 Stat. 1475, 86 Stat. 1478 (42 U.S.C. 405, 1302, 1383 (c) and (d), and 1383b).

9. The third sentence of § 416.1400(b) is revised to read as follows:

§ 416.1400 Introduction.

* * * * *

(b) *Nature of the administrative review process.* * * * Subject to the limitations on Appeals Council consideration of additional evidence (see §§ 416.1470(b) and 416.1476(b)), we will consider at each step of the review process any information you present as well as all the information in our records. * * *

10. Section 416.1470(b) is revised to read as follows:

§ 416.1470 Cases the Appeals Council will review.

* * * * *

(b) In reviewing decisions based on an application for benefits, if new and material evidence is submitted, the Appeals Council shall consider the additional evidence only where it relates to the period on or before the date of the administrative law judge hearing decision. In reviewing decisions other than those based on an application for benefits, the Appeals Council shall evaluate the entire record including any new and material evidence submitted. It will then review the case if it finds that the administrative law judge's action, findings, or conclusion is contrary to the weight of the evidence currently of record.

11. Section 416.1476(b) is revised to read as follows:

§ 416.1476 Procedures before Appeals Council on review.

* * * * *

(b) *Evidence.* (1) In reviewing decisions based on an application for benefits, the Appeals Council will consider the evidence in the administrative law judge hearing record and any new and material evidence only if it relates to the period on or before the

date of the administrative law judge hearing decision. If you submit evidence which does not relate to the period on or before the date of the administrative law judge hearing decision, the Appeals Council will return the additional evidence to you with an explanation as to why it did not accept the additional evidence and will advise you of your right to file a new application. The notice returning the evidence to you will also advise you that if you file an application within 60 days after the date of the Appeals Council's notice, your request for review will constitute a written statement indicating an intent to claim benefits in accordance with § 416.340. If a new application is filed within 60 days of this notice, the date of the request for review will be used as the filing date for your application.

(2) In reviewing decisions other than those based on an application for benefits, the Appeals Council will consider the evidence in the administrative law judge hearing record and any additional evidence it believes is material to an issue being considered.

(3) If additional evidence is needed, the Appeals Council may remand the case to an administrative law judge to receive evidence and issue a new decision. However, if the Appeals Council decides that it can obtain the evidence more quickly, it may do so, unless it will adversely affect your rights.

* * * * *

12. Section 416.1479 is revised to read as follows:

§ 416.1479 Decision of Appeals Council.

After it has reviewed all the evidence in the administrative law judge hearing record and any additional evidence received, subject to the limitations on Appeals Council consideration of additional evidence in §§ 416.1470(b) and 416.1476(b), the Appeals Council will make a decision or remand the case to an administrative law judge. The Appeals Council may affirm, modify or reverse the administrative law judge hearing decision or it may adopt, modify or reject a recommended decision. A copy of the Appeals Council's decision will be mailed to the parties at their last known address.

* * * * *

[FR Doc. 87-2653 Filed 2-6-87; 8:45 am]

BILLING CODE 4190-11-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 67

Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the Community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The modified base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
TEXAS	
Bedford (city), Tarrant County (FEMA Docket No. 6690)	
Bedford Creek:	
Approximately 600 feet downstream of Tibbets Drive	*529
Upstream side of State Route 121	*552
Upstream side of Bedford Road	*567
Approximately 100 feet downstream of Harwood Road	*580
East Branch Bedford Creek:	
Downstream side of Airport Freeway	*546
Upstream side of Commerce Place	*564
Upstream side of Bedford Road	*573
Approximately 100 feet downstream of northbound State Route 121	*584
East Fork Bedford Creek:	
At confluence with Bedford Creek	*552
Upstream side of Bedford Forum Drive	*558
Upstream side of Bedford Road	*567
Approximately 200 feet upstream of Park Avenue	*576
West Branch Bedford Creek:	
At downstream corporate limits	*536
Upstream side of Hospital Parkway	*545
Approximately 100 feet upstream of Park Place Avenue	*564
Approximately 300 feet downstream of Central Drive	*571
North Fork West Branch Bedford Creek:	
At confluence with West Branch Bedford Creek	*551
Approximately 1,100 feet upstream of confluence with West Branch Bedford Creek	*568

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Little Bear Creek:	
Upstream side of State Route 121 access road	*538
Upstream side of southbound Frontage Road	*541
Approximately 1,200 feet upstream of southbound Frontage Road	*542
Sulphur Branch:	
At downstream corporate limits	*506
Upstream side of Circle Lane	*525
Upstream side of Bedford Road	*550
Upstream side of Harwood Road	*583
Approximately 200 feet downstream of Simpson Terrace	*605
Stream SB-1:	
At confluence with Sulphur Branch	*518
Upstream side of Schumac Lane	*536
Upstream side of westbound State Route 121	*568
Approximately 70 feet upstream of Parkwood Drive	*604
Valley View Branch:	
Approximately 250 feet downstream of Cheryl Avenue	*547
Upstream side of Bedford Road	*563
Upstream side of westbound State Route 121	*574
Approximately 650 feet upstream of westbound State Route 121	*575
Approximately 300 feet downstream of Harwood Road	*591
Approximately 70 feet downstream of Harwood Road	*592
Maps available for inspection at the City Hall, 2000 Forest Ridge Drive, Bedford, Texas.	
South Houston (City), Harris County (FEMA Docket No. 6645)	
Berry Bayou (C106-00-00):	
At downstream corporate limits	*24
Approximately 200' upstream of College Avenue	*27
At confluence of Tributary 3.31	*31
At upstream corporate limits	*33
Tributary 2.00 to Berry Bayou (C106-03-00):	
At Winkler Drive	*23
Upstream side of Michigan Avenue	*32
Approximately 25 feet downstream of upstream corporate limits	*35
Tributary 3.31 to Berry Bayou (C106-08-00):	
At confluence with Berry Bayou	*31
Approximately .6 mile upstream of corporate limits	*35
*National Geodetic Vertical Datum 1973 releveling.	
Maps available for inspection at the City Hall, 1018 Dallas Street, South Houston, Texas.	

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Ashville (Town), St. Clair County (FEMA Docket No. 6730)	
Big Canoe Creek:	
About 400 feet downstream of U.S. Highway 231	*549
About 2700 feet upstream of Pinedale Road	*556
Maps available for inspection at the City Hall, P.O. Drawer 70, Ashville, Alabama 35953.	
ARIZONA	
Cochise County (Unincorporated Areas) (FEMA Docket No. 6730)	
Graveyard Gulch: At downstream side of San Juan Capistrano Avenue	*4450
Buena #3 North Extension: 1,700 feet north of intersection of Colombo Avenue and Charleston Highway	*4,420
Savanna Drive Drainage: At Leonardo Da Vinci Drive centerline	*4,398
Coyote Wash: At downstream side of Fry Boulevard (State Highway 90)	*4,392
Coyote Wash: At City of Sierra Vista corporate limits, immediately east of Fort Huachuca Military Reservation	*4,674
Unnamed Wash: At State Highway 92	*4,550
Unnamed Wash: 100 feet downstream of Fry Boulevard (State Highway 90)	*4,339
Stream E Tributary: At Fort Huachuca Military Reservation boundary	*4,656
Stream K: At downstream side of State Highway 92	*4,619
Stream E Tributary No. 2: At center of El Camino Real, 530 feet south of its intersection with Stream E Tributary	*4,552
Stream J: 50 feet downstream of State Highway 92	*4,597
Maps are available for review at the Department of Public Works, Cochise County Courthouse, Bisbee, Arizona.	
Pinal County (Unincorporated Areas) (FEMA Docket No. 6730)	
Santa Rosa Wash: 200 feet upstream of the intersection of Parter Road and the Southern Pacific Railroad, along Parter Road	#1
Vekol Wash: 200 feet south of the Southern Pacific Railroad along the boundary between R2E and R3E	*1,152
Vekol Wash: 2,100 feet west of the intersection between Vekol Wash Tributary and McDavid Road, along McDavid Road extended	#1
Vekol Wash Tributary: Intersection of Hathaway Avenue and King Street, downstream of Southern Pacific Railroad	#2
Maps are available for review at the County Planning and Zoning Department, 1301 Pinal, Florence, Arizona.	
Pinetop-Lakeside (Town), Navajo County (FEMA Docket No. 6703)	
Billy Creek: Approximately 200 Feet Above Center of Porter Mountain Road	*6,708
Walnut Gulch Creek: At Center of Nadean Drive	*6,937
Maps available for inspection at the Planning and Zoning Department, P.O. Drawer 1459, Pinetop-Lakeside, Arizona.	
ARKANSAS	
Bald Knob (City), White County (FEMA Docket No. 6730)	
Gum Creek:	
Upstream of corporate limits	*213
Approximately 1,700 feet downstream of East 1st Street	*216
Downstream of corporate limits	*228
Overflow Creek Tributary:	
Downstream of Missouri Pacific Railroad	*212
Upstream of Union Street	*252
Approximately 1,400 feet upstream of Union Street	*267
Maps available for inspection at the City Hall, 305 Main Street, Bald Knob, Arkansas.	
CALIFORNIA	
Hanford, (City), Kings County (FEMA Docket No. 6719)	
Shallow Flooding:	
About 1,220 feet east of 10th Avenue, 200 feet south of Clover Lane and 300 feet west of Niell Court	*243
About 900 feet east of 10th Avenue, 750 feet south of Clover Lane, and 1,100 feet north of Grangeville Boulevard	*248
Maps available for inspection at the office of the City Engineer, City Hall, 400 North Douty Street, Hanford, California.	
Lemoore (City), Kings County (FEMA Docket No. 6719)	
Shallow Flooding:	
About 600 feet east of Lemoore Avenue and extends to the eastern corporate limits	*227
Maps available for inspection at the Department of Public Works, City Hall, 119 Fox Street, Lemoore, California.	
Pacifica (City), San Mateo County (FEMA Docket No. 6676)	
Pacific Ocean: 50 feet west of intersection of Beach Boulevard and Montecito Avenue	*27
Maps available for inspection at Engineering Department, 170 Santa Maria Avenue, Pacifica, California.	
Siskiyou County (Unincorporated Areas) (FEMA Docket No. 6730)	
Klamath River (Near Town of Klamath River): 200 feet upstream from center of Walker Road Bridge	*1,700
Scott River (Near Fort Jones): 100 feet upstream from center of State Highway 3	*2,723
Moffett Creek (Near Fort Jones): 100 feet upstream from center of Scott River Road	*2,725
Whitney Creek Alluvial Fan (Near Weed): 2,000 feet downstream from center of U.S. Highway 97	#1
Maps available for inspection at the Siskiyou County Public Works Department, 305 Butte Street, Yreka, California.	
COLORADO	
Chaffee County (Unincorporated Areas) (FEMA Docket No. 6709)	
South Arkansas River: Approximately 100 feet upstream from the center of U.S. Highway 50 bridge	*7,016
Poncha Creek: At Town of Poncha Springs corporate limits, approximately 200 feet west of the intersection of County Road 115 and Pinyon Drive	*7,477
Chalk Creek: Immediately upstream of U.S. Highway 285 bridge	*7,685
Cottonwood Creek: Approximately 60 feet upstream from the center of County Road 361 bridge	*8,155
Maps are available for review at the County Administrator's Office, Chaffee County Courthouse, 123 Crestone, Salida, Colorado.	
Estes Park (Town), Larimer County (FEMA Docket No. 6703)	
Big Thompson River: Approximately 60 feet upstream of St. Vrain Avenue	*7,506
Big Thompson River Overflow: Approximately 320 feet upstream of confluence with Big Thompson River	*7,485
Fall River: Approximately 60 feet upstream of Spruce Drive	*7,549
Fall River Overflow: Approximately 80 feet upstream of confluence with Fall River	*7,561
Black Canyon Creek: Approximately 350 feet upstream of West Wonderview Avenue (U.S. Highway 34)	*7,546
Dry Gulch: Approximately 3000 feet north of intersection of Dry Gulch Road and U.S. Highway 34, along center of Dry Gulch Road	*7,481
Maps available for inspection at the Building Inspector's Office, 170 McGregor Street, Estes Park, Colorado.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Holyoke (City), Phillips County (FEMA Docket No. 6703)	
Frenchman Creek: Approximately 30 feet north of the centerline of US route 6, along Frenchman Creek	*3,728
North Fork Frenchman Creek: Approximately 395 feet upstream of the confluence with Frenchman Creek	*3,744
South Fork Frenchman Creek: Approximately 110 feet upstream of the centerline of Denver Street	*3,746
Maps available for inspection at the City Superintendents Office, 207 West Denver, Holyoke, Colorado.	
Larimer County (Unincorporated Areas) (FEMA Docket No. 6709)	
Big Thompson River: Approximately 25 feet upstream from center of Marys Lake Road bridge	*7,627
Fall River: Approximately 120 feet upstream from center of Fish Hatchery Road bridge	*8,010
Black Canyon Creek: Approximately 25 feet downstream from center of McGregor Avenue Bridge	*7,611
Maps are available for review at the Flood Plain Administrator's Office, 218 West Mountain Avenue, Fort Collins, Colorado.	
Poncha Springs (Town), Chaffee County (FEMA Docket No. 6709)	
South Arkansas River: Approximately 80 feet upstream of the center of Highway 285	*7,448
Poncha Creek: Approximately 125 feet downstream of the center of Hot Springs Road	*7,470
Maps are available for review at the Mayor's Office, 330 Burnett Street, Poncha Springs, Colorado.	
Rio Grande County (Unincorporated Areas) (FEMA Docket No. 6730)	
Rio Grande: Vicinity of Monte Vista: At Gunbarrel Road (U.S. Highway 285)	*7,659
Rio Grande: Vicinity of Del Norte: Approximately 260 feet east of the center of the intersection of First and Spruce Streets	*7,874
Rio Grande: Vicinity of South Fork: At Gerrard Road (County Road 19)	*8,137
South Fork Rio Grande: At U.S. Highway 160	*8,187
Maps are available for inspection at the County Commissioners Office, Rio Grande County Courthouse, 6th and Cherry Streets, Del Norte, Colorado.	
DELAWARE	
New Castle (City), New Castle County (FEMA Docket No. 6730)	
Delaware River: Entire shoreline within community	*10
Maps available for inspection at the City Administration Building, 220 Delaware, New Castle, Delaware.	
Newport (Town), New Castle County (FEMA Docket No. 6730)	
Christina River:	
Approximately 375 feet downstream of corporate limits	*10
At upstream corporate limits	*12
Maps available for inspection at the Town Hall, 15 North Augustine Street, Newport, Delaware.	
GEORGIA	
Alma (City), Bacon County (FEMA Docket No. 6730)	
Hurricane Creek:	
About 1500 feet downstream of State Route 32	*142
About 600 feet upstream of U.S. Route 1	*150
Maps available for inspection at the City Manager's Office, City Hall, P.O. Box 429, Alma, Georgia.	
Atlanta (City), Fulton and DeKalb Counties (FEMA Docket No. 6719)	
Caldwell Branch:	
About 2000 feet downstream of Melvin Drive	*824
About 2500 feet upstream of Melvin Drive	*867
Camp Creek:	
About 1800 feet downstream of Seaboard Coastline Railroad	*814
At confluence of North Fork Camp Creek	*822
North Fork Camp Creek:	
About 0.5 mile downstream of Redwine Road	*822
About 0.45 mile upstream of Interstate 285	*856
Center Hill Tributary:	
At mouth	*777
Just downstream of Spring Street	*791
Just upstream of Spring Street	*796
Just downstream of Bankhead Highway	*848
Just upstream of Bankhead Highway	*856
About 925 feet upstream of Detroit Avenue	*872
About 935 feet upstream of Detroit Avenue	*877
Just upstream of Simpson Road	*883
Chattahoochee River:	
About 3300 feet downstream of Bankhead Highway	*766
About 2100 feet upstream of Interstate 75	*778
Clear Creek:	
At mouth	*801
About 950 feet downstream of Polo Drive	*811
About 400 feet upstream of Polo Drive	*823
About 250 feet downstream of Park Drive	*846
Just downstream of Park Drive	*860
About 1350 feet upstream of Park Drive	*864
Cowart Lake Tributary:	
About 0.5 mile downstream of Tell Road	*830
Just downstream of Creek Valley Court	*884
Empire Park Tributary:	
At mouth	*802
Just downstream of Browns Mill Road	*822
Federal Prison Creek:	
At mouth	*793
About 0.74 mile upstream of Constitution Road	*844
About 0.78 mile upstream of Constitution Road	*856
About 1.35 miles upstream of Constitution Road	*908
About 1.38 miles upstream of Constitution Road	*918
About 1.53 miles upstream of Constitution Road	*925
Intrenchment Creek:	
Just upstream of Moreland Avenue	*865
About 0.9 mile upstream of Woodland Avenue	*880
Lenox Road Tributary:	
At mouth	*819
About 3000 feet upstream of Shady Valley Drive	*829
Mozley Park Tributary:	
At confluence with Proctor Creek	*832
Just downstream of North Avenue	*849
Just upstream of North Avenue	*855
Nancy Creek:	
At mouth	*774
About 850 feet upstream of Lake Forrest Road	*823
About 1,000 feet upstream of Lake Forrest Road	*830
About 0.9 mile upstream of Wieuca Road	*841
Niskey Lake Tributary:	
About 1.1 miles downstream of Niskey Lake Road	*809
About 0.8 mile downstream of Niskey Lake Road	*816
About 0.76 mile downstream of Niskey Lake Road	*845
About 850 feet downstream of Niskey Lake Road	*861
Just upstream of Niskey Lake Road	*870
About 0.6 mile upstream of Niskey Lake Road	*902
Peachtree Creek:	
At mouth	*774
About 900 feet upstream of Piedmont Road	*807
North Fork Peachtree Creek:	
At mouth	*807
Just upstream of confluence of Lenox Road Tributary	*819
South Fork Peachtree Creek:	
At mouth	*807
About 550 feet upstream of confluence of Rock Creek	*834
Poole Creek:	
At mouth	*797
About 3,000 feet upstream of Jonesboro Road	*827
Proctor Creek:	
At mouth	*768
Just downstream of Hollywood Road	*778
Just upstream of Hollywood Road	*783
Just downstream of Kerry Circle	*803
Just upstream of Kerry Circle	*810
Just downstream of North Avenue	*871
Just upstream of Seaboard Coastline Railroad	*900
About 1,700 feet upstream of Simpson Road	*906
Just upstream of Burbank Drive	*920
About 300 feet downstream of Martin Luther King Jr. Drive	*927
Just upstream of Martin Luther King Jr. Drive	*941
Sandy Creek:	
About 800 feet downstream of Sandy Creek Road	*766
Just downstream of Interstate 285	*788
About 300 feet upstream of Interstate 285	*800
Just downstream of Waterford Road	*814
Just upstream of Waterford Road	*820
At Baker Ridge Drive	*843
South River:	
About 1,000 feet downstream of the confluence of Federal Prison Creek	*793
Just downstream of Jonesboro Road	*797
Just upstream of Jonesboro Road	*802
At confluence of South Fork South River	*818
North Fork South River:	
At confluence of South Fork South River	*818
Just downstream of confluence of Middle Branch South River	*822
Just upstream of Lakewood Avenue	*890
Just downstream of Pryor Road	*905
Just upstream of Pryor Road	*926
About 1,050 feet upstream of Joy-Land Place	*927
Middle Branch South River:	
At mouth	*824
About 300 feet upstream of Lakewood Avenue	*890
About 1,300 feet upstream of Fair Drive	*908
South Fork South River:	
At mouth	*818
Just downstream of Springdale Road	*855
Just upstream of Springdale Road	*865
Sugar Creek:	
Just upstream of Glenwood Avenue	*922
Just downstream of Wyman Street	*931
Just upstream of Wyman Street	*936
About 300 feet upstream of Memorial Drive	*937
Utoy Creek:	
About 0.9 mile downstream of confluence of Wildwood Lake Tributary	*781
About 1.3 miles upstream of confluence of Wildwood Lake Tributary	*804
North Utoy Creek:	
About 1,300 feet downstream of Benjamin E. Mays Drive	*809
About 1,000 feet upstream of Beecher Road	*894
South Utoy Creek:	
About 2,000 feet downstream of Childress Drive	*821
About 500 feet upstream of Alison Court	*895
Whetstone Creek: Within community	*773
East Fork Whetstone Creek:	
At confluence with Whetstone Creek	*773
Just downstream of La Dawn Lane	*783
Just upstream of La Dawn Lane	*790
Just downstream of Marietta Road	*818
Wildwood Lake Tributary:	
At mouth	*794
Just upstream of Plainville Drive	*809
About 500 feet upstream of Plainville Drive	*817
Just upstream of Branch Drive	*850
Maps available for inspection at the Bureau of Highways and Streets, Department of Public Works, 224 Central Avenue, SW, Atlanta, Georgia.	
Bainbridge (City), Decatur County (FEMA Docket No. 6730)	
Flint River:	
About 2.4 miles downstream of U.S. Route 27	*91
About 2.85 miles upstream of U.S. Route 27 (Business)	*98
Maps available for inspection at the Building Inspection Department, City Hall, P.O. Box 158, Bainbridge, Georgia.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Chatham County (Unincorporated Areas) (FEMA Docket No. 6730)	
Savannah River:	
Just upstream of City of Port Wentworth Corporate Limits	*12
At upstream County Boundary	*15
Ogeechee River:	
Just upstream of Interstate 95	*12
About 2.1 miles upstream of State Route 204	*30
St. Augustine Creek:	
About 1,000 feet downstream of an unnamed road (about 0.7 mile upstream of Interstate 95)	*12
About 3.2 miles upstream of an unnamed road (about 0.7 mile upstream of Interstate 95)	*19
St. Augustine Creek Tributary:	
Just upstream of Godley Road	*12
About 4.9 miles upstream of Interstate 95	*19
Pipe Makers Canal:	
Just upstream of Norfolk Southern Railway	*12
Just downstream of U.S. Route 80	*22
Hardin Canal:	
Just upstream of Interstate 16	*12
About 1.0 mile upstream of Wildcat Dam Road	*18
Dundee Canal:	
Just upstream of Norfolk Southern Railway	*12
About 1.5 miles upstream of Louisville Road	*15
Salt Creek Tributary:	
Just upstream of Interstate 16	*12
Just downstream of Louisville Road	*15
Lower Springfield Canal Tributary:	
Just upstream of Seaboard Coast Line Railroad	*12
Just downstream of Garrard Avenue (about 1.7 miles upstream of mouth)	*12
Springfield Canal: Within community	13
Springfield Canal Tributary A:	
Just downstream of Seaboard Coast Line Railroad	*13
Just downstream of U.S. Route 17 (about 1.0 mile upstream of Lynes Parkway)	*15
Casey Canal: Within community	*13
Atlantic Ocean:	
Along Middle River from mouth to U.S. Route 17	*11
At Atlantic Coastal Highway over Little Ogeechee River	*12
About 1,000 feet northwest of confluence of Williamson Creek with Herb River	*12
At Pennyworth Island	*12
At intersection of Bartram Road and Landings Way	*13
At confluence of Lazaretto Creek with Bull River	*17
Just northwest of divergence of Bear River from Ogeechee River	*16
Along shoreline	*20
Maps available for inspection at the County Engineer's Office, County Courthouse, Savannah, Georgia.	
Cordele (City), Crisp County (FEMA Docket No. 6730)	
Gum Creek:	
About 1,700 feet downstream of Seaboard Coast Line Railroad	*277
Just upstream of U.S. Route 41	*287
Cordele Creek:	
About 1,700 feet downstream of Sixth Avenue	*283
Just upstream of Norfolk Southern Railway	*292
Malcolm Branch:	
Just upstream of Sixth Street	*288
Just downstream of Eighth Avenue	*303
Maps available for inspection at the City Hall, Community Development Department, Rm 240 P.O. Box 569, Cordele, Georgia.	
Effingham County (Unincorporated Areas) (FEMA Docket No. 6719)	
Dasher Creek:	
About 700 feet upstream of Seckinger Ford Road	*20
About 3,900 feet upstream of Baker Hill Road Extension	*30
Willowpeg Creek:	
At confluence with Sweigoffer Creek	*24
Just downstream of Seaboard Coast Line Railroad	*50
Polly Creek:	
Just upstream of Zeigler Road	*39
About 2,200 feet upstream of State Route 21	*62
Sweigoffer Creek:	
Just upstream of Old Augusta Road	*17
Just downstream of South Blanford Road	*45
Ebenezer Creek:	
Just upstream of Log Landing Road	*28
About 5,000 feet upstream of State Route 119	*44
Jacks Branch:	
At mouth	*37
About 1.45 miles upstream of Tusculum-Springfield Road	*68
Snooks Branch:	
At mouth	*47
Just downstream of State Route 119	*55
Just upstream of State Route 119	*60
Just downstream of First Street	*77
White Deer Branch:	
At mouth	*48
About 1.4 miles upstream of State Route 119	*77
Maps available for inspection at the Board of Commissioners Office, County Courthouse, P.O. Box 307, Springfield, Georgia.	
Floyd County (Unincorporated Areas) (FEMA Docket No. 6730)	
Coosa River:	
Just upstream of State Route 100	*585
About 2,000 feet upstream of confluence of Horseleg Creek	*596
Etowah River:	
About 3,500 feet upstream of Norfolk Southern Railway	*599
At county boundary	*618
Oostanaula River:	
About 2,500 feet downstream of Norfolk Southern Railway	*596
About 2.2 miles upstream of confluence of Armuchee Creek	*604
Armuchee Creek:	
At mouth	*602
At county boundary	*636
Booze Creek:	
At mouth	*637
Just downstream of Booze Mountain Road	*673
Dykes Creek:	
At mouth	*605
Just downstream of Halls Lake Dam	*644
Just upstream of Halls Lake Dam	*652
Just downstream of Gentry Road	*735
Little Armuchee Creek:	
At mouth	*622
At county boundary	*636
Little Cedar Creek:	
At mouth	*604
About 0.9 mile upstream of Norfolk Southern Railway	*628
Little Dry Creek:	
At mouth	*596
Just downstream of Possum Trot Road	*653
Silver Creek:	
About 0.4 mile downstream of Darlington Drive	*602
About 1.7 miles upstream of Lindale Road	*672
Prentis Branch:	
At mouth	*609
Just downstream of Eden Valley Road	*639
Tributary A:	
At mouth	*599
About 1,200 feet upstream of Turner Chapel Road	*600
Horseleg Creek:	
At confluence of South Fork Horseleg Creek	*607
About 500 feet upstream of Burnett Ferry Road	*614
South Fork Horseleg Creek:	
At mouth	*607
About 2,000 feet upstream of mouth	*617
Burwell Creek: Within community	*596
Maps available for inspection at the Code Enforcement Department, City of Rome, P.O. Box 1433, Rome, Georgia.	
Rincon (City), Effingham County (FEMA Docket No. 6703)	
Dasher Creek:	
About 1.3 miles downstream of State Route 21	*29
About 2,500 feet upstream of Seaboard Coast Line Railroad	*47
Polly Creek:	
About 1,100 feet downstream of State Route 21	*57
About 2,100 feet upstream of State Route 21	*62
Rincon Branch:	
At mouth	*34
Just downstream of Fourth Street	*46
Just upstream of Fourth Street	*56
Just downstream of Seaboard Coast Line Railroad	*57
Just upstream of Seaboard Coast Line Railroad	*67
About 2,500 feet upstream of Old Columbia Avenue	*67
Sweigoffer Creek:	
About 1,850 feet downstream of confluence of Willowpeg Creek	*21
At confluence of Willowpeg Creek	*23
Willowpeg Creek:	
At mouth	*23
Just downstream of State Route 21	*38
Maps available for inspection at the City Hall, Rincon, Georgia.	
Springfield (City), Effingham County (FEMA Docket No. 6719)	
Ebenezer Creek:	
Just downstream of Stillwell Road	*36
At confluence of Jacks Creek	*37
Jacks Creek:	
At confluence with Ebenezer Creek	*37
At confluence of Snooks Branch	*47
Snooks Branch:	
At confluence with Jacks Creek	*47
Just downstream of State Route 119	*55
Just upstream of State Route 119	*60
Just downstream of First Street bridge	*77
Maps available for inspection at the City Clerk's Office, City Hall, Springfield, Georgia.	
HAWAII	
Kauai County (FEMA Docket No. 6719)	
Wainiha River: 2,180 feet upstream of Kuhio Highway Bridge	*23
Opaekaa Stream: 660 feet upstream of Opaekaa Road Bridge	*299
Opaekaa Tributary: At Poo Road Bridge	*311
Kekaka Drainageway: At intersection of Kokee Road and Kekaha Road	*12
Waimea Stream: 580 feet upstream of Kaumaulii Highway Bridge	*14
Lawai Stream: 180 feet upstream of Kaumaulii Highway Bridge	*483
Huleia Stream: 700 feet downstream of confluence with Papakolea Stream	*14
Papakolea Stream: 2,000 feet upstream of confluence with Huleia Stream	*15
Coastal Flooding: At coastal mile marker 97	*11
Maps available for review at the County Engineer's Office, County of Kauai, Department of Public Works, 4396 Rice Street, Lihue, Kauai, Hawaii	
IDAHO	
Cambridge (City), Washington County (FEMA Docket No. 6709)	
Rush Creek: Approximately 15 feet north of the center of Superior Street, along Rush Creek	*2,642
Maps are available for review at the City Hall, Cambridge, Idaho.	
Midvale (City), Washington County (FEMA Docket No. 6709)	
Weiser River: At Bridge Street	*2,538
Maps are available for review at the City Hall, Midvale, Idaho.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Weiser (City), Washington County (FEMA Docket No. 6709)	
Snake River: Approximately 660 feet downstream from the center of U.S. Highway 30N Bridge	*2,102
Weiser River: Approximately 30 feet upstream from the center of East Eleventh Street, along the Union Pacific Railroad	*2,109
Monroe Creek: Approximately 20 feet upstream of and parallel to East Park Street	*2,125
Maps are available for review at the City Planning and Zoning Department, 55 West Idaho, Weiser, Idaho.	
IDAHO	
Washington County (Unincorporated Areas) (FEMA Docket No. 6709)	
Snake River: Approximately 600 feet downstream from center of U.S. Highway 30N Bridge	*2,102
Weiser River: Approximately 50 feet upstream from center of U.S. Highway 95-30N Bridge	*2,106
Monroe Creek: Approximately 50 feet upstream from Calloway Canal	*2,146
Rush Creek: Approprimately 25 feet upstream from center of Union Pacific Railroad	*2,639
Maps are available for review at the County Courthouse, 256 East Court Street, Weiser, Idaho.	
INDIANA	
Lafontaine (Town), Wabash County (FEMA Docket No. 6730)	
Grant Creek:	
About 1750 feet downstream of State Route 15	*786
About 2100 feet upstream of Main Street	*805
Maps available for inspection at the Town Hall, P.O. Box 207, 23 West Branson, Lafontaine, Indiana.	
KANSAS	
Bel Aire (City), Sedgewick County (FEMA Docket No. 6730)	
East Fork Chisholm Creek:	
Just upstream of Missouri Pacific Railroad	*1,376
Just downstream of 45th Street	*1,377
East Fork Chisholm Creek Tributary No. 3:	
Just upstream of 37th Street	*1,372
Just downstream of East Fork Chisholm Creek Tributary No. 3 Dam	*1,377
Just upstream of East Fork Chisholm Creek Tributary No. 3 Dam	*1,383
About 0.46 mile upstream of Harding Avenue	*1,387
East Fork Chisholm Creek Tributary No. 7:	
Just upstream of Missouri Pacific Railroad	*1,374
About 0.25 mile upstream of Forty Fifth Street	*1,405
Maps available for inspection at the City of Bel Aire, 4343 North Woodlawn, Wichita, Kansas.	
Cedar Point (City), Chase County (FEMA Docket No. 6719)	
Cottonwood Creek:	
About 1500 feet downstream of First Street	*1,252
About 2100 feet upstream of First Street	*1,254
Maps available for inspection at the City Hall, Cedar Point, Kansas.	
Junction City (City), Geary County (FEMA Docket No. 6730)	
Smoky Hill River:	
At confluence of Republican River	*1,070
About 0.55 mile upstream of U.S. Highway 77	*1,089
Smoky Hill River Overflow:	
Just upstream of 6th Street	*1,074
About 1.9 miles upstream of 6th Street	*1,083
Republican River:	
At confluence with Smoky Hill River	*1,070
About 0.8 mile upstream of Washington Street	*1,074
Maps available for inspection at the City Engineer's Office, Municipal Building, P.O. Box 287, Junction City, Kansas.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
KENTUCKY	
Lewis County (Unincorporated Areas) (FEMA Docket No. 6703)	
Ohio River:	
At downstream county boundary	*518
At upstream county boundary	*535
Maps available for inspection at the County Courthouse, Vanceburg, Kentucky.	
Vanceburg (City), Lewis County (FEMA Docket No. 6703)	
Ohio River: Within community	*527
Maps available for inspection at the Municipal Building, 609 Front Street, Vanceburg, Kentucky.	
MAINE	
Bowdoinham (Town), Sacadahoc County (FEMA Docket No. 6730)	
Kennebec River:	
At downstream corporate limits	*9
At the Obald Point	*13
At upstream corporate limits	*16
Merrymeeting Bay: Entire shoreline within community	*9
Abagadasset River: From confluence with Merrymeeting Bay to approximately .44 mile downstream confluence of Baker Brook	*9
Maps available for inspection at the Planning Board, Bowdoinham, Maine.	
Dresden (Town), Lincoln County (FEMA Docket No. 6730)	
Kennebec River:	
At downstream corporate limits	*12
Upstream side of State Route 197	*17
At upstream corporate limits	*24
Maps available for inspection at the Town Hall, Dresden, Maine.	
Greenville (Town), Piscataquis County (FEMA Docket No. 6709)	
Moosehead Lake: Entire shoreline affecting community	*1,030
Maps available for inspection at the Town Office, Minden Street, Greenville, Maine.	
Hudson (Town), Penobscot County (FEMA Docket No. 6730)	
Pushaw Stream:	
Approximately 800 feet upstream of State Route 221	*138
At Jeep Trail Crossing	*143
At confluence with Little Pushaw Pond	*147
Maps available for inspection at the Selectman's Office, Hudson, Maine.	
MARYLAND	
St. Mary's County (FEMA Docket No. 6719)	
Chaptico Creek:	
At Chaptico Point	*6
Upstream side of State Route 234 Bridge	*16
0.77 mile downstream of Asher Road	*36
At Asher Road Bridge	*55
Beverly Road extended	*56
Coffee Hill Run:	
Downstream side of Chaptico-Mechanicsville Road Bridge	*17
Approximately .85 mile upstream of Chaptico-Mechanicsville Road Bridge	*28
Hayden Run:	
At confluence with Chaptico Creek	*17
Approximately .8 mile upstream of confluence with Chaptico Creek	*25
Approximately .3 mile downstream of confluence with Forrest Hall Branch	*32
At confluence with Forrest Hall Branch	*36

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Forrest Hall Branch:	
At confluence with Hayden Run	*36
Approximately .6 mile upstream of Baptist Church Road Bridge	*50
Hillton Run:	
Approximately 575 feet downstream of State Route 5 Bridge	*6
Approximately 1 mile upstream of State Route 5 Bridge	*30
Approximately 2.2 miles upstream of State Route 5 Bridge	*52
McIntosh Run:	
At Buzzard Point	*6
Approximately 550 feet downstream of Waldorf Leonardtown Road Bridge	*10
Approximately 1 mile upstream of Waldorf Leonardtown Road Bridge	*21
Approximately 1 mile downstream of McIntosh Road Bridge	*29
Upstream side of McIntosh Road Bridge	*39
Jarboesville Run:	
At confluence with St. Mary's River	*29
Downstream side of Chancellors Run Road Bridge	*46
Approximately 2 miles upstream of Chancellors Run Road Bridge	*74
St. Mary's River:	
At Warehouse Point	*5
Downstream side of State Route 5 Bridge	*17
Downstream side of Indian Bridge Road Bridge, 1st downstream crossing	*21
Downstream side of Indian Bridge Road Bridge, 2nd downstream crossing	*27
Confluence with Jarboesville Run	*29
Wicomico River:	
Shoreline at Luckland Point	*6
Shoreline at Bluff Point	*8
Potomac River:	
Shoreline at Lane Pond	*5
Shoreline at Poseys Bluff	*8
Entire western shoreline at St. Clements Island	*9
Chesapeake Bay:	
At Oyster Point	*5
Shoreline at Cedar Point	*8
Patuxent River:	
Shoreline at Captain Point	*6
Shoreline at Green Holly Road extended	*8
Eastern Branch:	
At confluence with St. Mary's River	*5
At confluence of Hillton Run	*6
Maps available for inspection at the Office of Planning and Zoning, Leonardtown, Maryland.	
MASSACHUSETTS	
Malden (City), Middlesex County (FEMA Docket No. 6730)	
Town Line Brook:	
At downstream corporate limits	*6
Upstream side of first upstream bridge	*7
Upstream side of Lynn Street	*8
Lower Spot Pond Brook: Upstream side of Malden River Tunnel	*37
Malden River:	
At downstream corporate limits	*4
Upstream side of Medford Street	*5
Maps available for inspection at the City Engineer's Office, Malden Governor Center, 200 Pleasant Street, Malden, Massachusetts.	
MICHIGAN	
Alabaster (Township), Iosco County (FEMA Docket No. 6719)	
Lake Huron: Along shoreline (Saginaw Bay)	*584
Maps available for inspection at the Township Hall, 1716 South U.S. 23, Tawas, Michigan.	
Chocolay (Township), Marquette County (FEMA Docket No. 6730)	
Chocolay River:	
At mouth	*604
About 3.4 miles upstream of State Highway 28	*617
Silver Creek:	
At mouth	*612
Just downstream of U.S. Highway 41	*633

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just upstream of U.S. Highway 41	*639
About 600 feet upstream of Willow Road	*653
Maps available for inspection at the Township Hall, Marquette, Michigan.	
Dexter (Township), Washtenaw County (FEMA Docket No. 6719)	
Huron River:	
Just downstream of North Territorial Road	*845
About 1,000 feet upstream of Flook Dam	*852
Portage Lake: Entire shoreline	*852
Little Portage Lake: Entire shoreline	*852
Silver Lake: Entire shoreline	*876
Losee Lake: Entire shoreline	*880
Halfmoon Lake: Entire shoreline	*885
North Lake: Entire shoreline	*939
Blind Lake: Entire shoreline	*885
Maps available for inspection at the Dexter Township Hall, 6680 Dexter-Pinckney Road, Dexter, Michigan.	
Fowlerville (Village), Livingston County (FEMA Docket No. 6719)	
Red Cedar River:	
About 0.6 mile downstream of Grand River	*883
About 1,900 feet upstream of Chessie System	*887
County Drain No. 2:	
At mouth	*884
About 250 feet upstream of Pinewood Drive	*899
Maps available for inspection at the Village Hall, 137 North Grand Avenue Fowlerville, Michigan.	
Manistee (City), Manistee County (FEMA Docket No. 6719)	
Lake Michigan: Within community	*584
Manistee Lake: Within community	*584
Maps available for inspection at the Assessor Office, City Hall, Manistee, Michigan.	
MINNESOTA	
Scott County (Unincorporated Areas) (FEMA Docket No. 6719)	
Minnesota River:	
About 3.6 miles upstream of Chicago and North Western Railroad	*725
At southern County Boundary	*740
Sand Creek:	
At mouth	*725
About 1.5 miles upstream of County Road 61	*834
Maps available for inspection at the Scott County Courthouse, P.I.E. Office, Room A102, Shakopee, Minnesota.	
MISSISSIPPI	
Warren County (Unincorporated Areas) (FEMA Docket No. 6730)	
Bliss Creek:	
Just downstream Illinois Central Gulf Railroad	*105
Just upstream Illinois Central Gulf Railroad	*111
About 1.2 miles upstream of Bypass 61	*129
Maps available for inspection at the County Courthouse, P.O. Box 351, Vicksburg, Mississippi.	
MISSOURI	
Kirkwood (City), St. Louis County (FEMA Docket No. 6730)	
Kirkwood Creek:	
Just upstream of Big Bend Road	*568
About 800 feet upstream of Burlington Northern Railroad	*583
Sugar Creek:	
Just upstream of I-270 at corporate limits	*463
About 1100 feet upstream of Second Private Road Crossing	*500
Meramec River:	
Downstream corporate limits	*425
Upstream corporate limits	*428
Maps available for inspection at the City Hall, 139 South Kirkwood, Kirkwood, Missouri.	
Miner (City), Scott County (FEMA Docket No. 6730)	
Shallow Flooding (St. John's Bayou Main Ditch):	
Just north of Ables Street	*309
Just north of County Highway HH	*312
Shallow Flooding (North Cut Ditch):	
About 0.5 mile south of Woods Lane	*309
About 0.3 mile east of intersection of County Highway HH and Main Street	*314
Maps available for inspection at the Miner City Hall, 103 H Road, Sikeston, Missouri.	
Scott County (Unincorporated Areas) (FEMA Docket No. 6730)	
Mississippi River:	
At downstream County Boundary	*338
About 0.15 mile upstream of confluence of Headwater Diversion Channel	*353
Shallow Flooding (Ditch No. 1):	
Just downstream of State Highway 114	*300
About 0.5 mile upstream of County Highway ZZ	*306
Shallow Flooding (Ditch No. 2):	
At downstream County Boundary	*301
About 0.5 mile upstream of County Highway ZZ	*306
Shallow Flooding (Ditch No. 4):	
Just upstream of City of Sikeston corporate limits	*304
About 0.5 mile upstream of County Highway ZZ	*306
Shallow Flooding (St. Johns Bayou Main Ditch):	
At downstream County Boundary	*309
About 2.9 miles upstream of County Highway HH	*316
Shallow Flooding (North Cut Ditch):	
At downstream County Boundary	*308
Just downstream County Highway D	*323
Ramsey Creek Diversion Channel: Within Community	*353
Ramsey Creek:	
Just upstream of Burlington Northern Railroad	*353
Just downstream of confluence of Illmo Branch	*354
Illmo Branch:	
Just upstream of confluence with Ramsey Creek	*354
Just downstream of Interstate 55	*355
Maps available for inspection at the County Courthouse, Box 188, Benton, Missouri.	
Ste. Genevieve County (Unincorporated Areas) (FEMA Docket No. 6730)	
Mississippi River:	
About 5.1 miles downstream of state boundary	*393
At upstream county boundary	*406
North Gabouri Creek:	
About 1.3 miles upstream of Burlington Northern Railroad	*403
About 3.2 miles upstream of Burlington Northern Railroad	*463
South Gabouri:	
Just upstream of U.S. Highway 61	*413
Just downstream of Missouri Pacific Railroad	*470
Maps available for inspection at the County Courthouse, Ste. Genevieve, Missouri.	
MONTANA	
Blaine County (Unincorporated Areas) (FEMA Docket No. 6730)	
Lodge Creek: 150 feet downstream of U.S. Highway 2	*2,404
Lodge Creek (Overbank 1): 420 feet east of North Chinook Road, along north edge of Burlington Northern Railroad	*2,403
Lodge Creek (Overbank 2): 0.7 mile east of Fort Belknap Canal crossing on Lodge Creek	*2,412
Milk River (Near Chinook): 750 feet downstream of County Highway 529	*2,410
Milk River (Near Zurich): At intersection of Zurich and Paradise Valley Roads	*2,377
Redrock Coulee: At intersection of Redrock Coulee and U.S. Highway 2	*2,411
Thirtymile Creek: 760 feet downstream of County Road 241	*2,367
Maps are available for review at the Flood Plain Administrator's Office, Blaine County Courthouse, Chinook, Montana.	
Chinook (City), Blaine County (FEMA Docket No. 6730)	
Lodge Creek: At intersection of 13th and Missouri Streets	*2,409
Milk River: 100 feet southwest of intersection of County Roads 240 and 529	*2,408
Maps are available for review at the Town Hall, Chinook, Montana.	
Harlem (City), Blaine County (FEMA Docket No. 6730)	
Thirtymile Creek: At intersection of Water Street and Buckeye Avenue	*2,366
Maps are available for review at the City Engineer's Office, City Hall, Harlem, Montana.	
Livingston (City), Park County (FEMA Docket No. 6730)	
Yellowstone River: At intersection of I and Clark Streets	*4,475
Maps are available for review at the City Superintendent's Office, 414 East Callender, Livingston, Montana.	
Malta (City), Phillips County (FEMA Dooket No. 6730)	
Milk River: At intersection of South 2nd Avenue West and South 1st Street	*2,249
Maps are available for review at the City Hall, Malta, Montana.	
Phillips County (Unincorporated Areas) (FEMA Docket No. 6730)	
Milk River: 100 feet upstream of U.S. Highway 2	*2,248
Shallow Flooding: 500 feet south of confluence of Alkali Creek and Milk River	*2,256
Maps are available for review at the County Clerk and Recorder's Office, Phillips County Courthouse, Malta, Montana.	
NEVADA	
Storey County (Unincorporated Areas) (FEMA Docket No. 6709)	
Truckee River: Approximately 100 feet downstream from center of McCarren Ranch Road	*4,291
Maps are available for review at the Storey County Courthouse, Virginia City, Nevada.	
NEW JERSEY	
Wharton (Borough), Morris County (FEMA Docket No. 6719)	
Rockaway River:	
Downstream corporate limits	*591
At confluence of Green Pond Brook	*612
Downstream side of North Main Street	*635
Approximately 1,200 feet downstream of Pine Street	*644
Upstream corporate limits	*660
Green Pond Brook:	
At confluence with Rockaway River	*612
Upstream side of State Route 15	*622
Upstream side of culvert under abandoned bridge	*653
Upstream corporate limits	*683
Maps available for inspection at the Municipal Building, Wharton, New Jersey.	
NEW YORK	
Alexander (Town), Genesee County (FEMA Docket No. 6730)	
Tonawanda Creek:	
Upstream side of U.S. Route 20	*930
Upstream side of Stroh Road	*945
Upstream corporate limits	*955

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 3,700 feet upstream of upstream corporate limits	*962
Maps available for inspection at the Town Clerk's Home, 3361 Buffalo Street, Alexander, New York.	
Alexander (Village), Genesee County (FEMA Docket No. 6730)	
Tonawanda Creek:	
Upstream corporate limits	*932
Downstream corporate limits	*930
Maps available for inspection at the Village Clerk's Home, Alexander, New York.	
Beekmantown (Town), Clinton County (FEMA Docket No. 6730)	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Hall, Spellman Road, Beekmantown, New York.	
Chazy (Town), Clinton County (FEMA Docket No. 6730)	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Hall, Main Street, Route 9, Chazy, New York.	
Chesterfield (Town), Essex County (FEMA Docket No. 6730)	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Office, Clinton Street, Keeseville, New York.	
Deerpark (Town), Orange County (FEMA Docket No. 6719)	
Delaware River:	
Downstream corporate limits	*449
Approximately 200 feet downstream of CONRAIL bridge	*464
Neversink River:	
Downstream side of Interstate Route 84	*428
At confluence of Gold Creek	*432
Downstream side of Neversink Drive	*441
Downstream side of Graham Road	*469
Downstream side of State Route 209	*497
Approximately .83 mile upstream of State Route 209	*520
Approximately 1.24 miles upstream of State Route 209	*538
Approximately 1.86 miles upstream of State Route 209	*560
Approximately 1.64 miles downstream of Oakland Valley Road	*580
Approximately 1.11 miles downstream of Oakland Valley Road	*600
Approximately .57 mile downstream of Oakland Valley Road	*620
Upstream corporate limits	*646
Basher Kill:	
Confluence with Neversink River	*484
Upstream side of State Route 211	*488
Upstream side of Port Orange Road	*490
Downstream side of Otisville Road	*501
Upstream corporate limits	*506
Maps available for inspection at the Huguenot Town Hall, Route 209, Huguenot, New York.	
Essex (Town), Essex County (FEMA Docket No. 6730)	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Hall, Essex, New York.	
Fremont (Town), Sullivan County (FEMA Docket No. 6730)	
Delaware River:	
At downstream corporate limits	*790
At confluence of Hankins Creek	*806
Upstream side of Kellams Bridge	*816
At upstream corporate limits	*841
Hankins Creek:	
Upstream side of State Route 97 Bridge	*806
Upstream side of County Route 94 Bridge	*945
Approximately 345 feet upstream of Private Bridge	*1,073
Maps available for inspection at the Fremont Town Hall, Fremont Center, New York.	
Groton (Village), Tompkins County (FEMA Docket No. 6730)	
Owasco Inlet:	
At downstream corporate limits	*964
Upstream side of Spring Street	*997
Approximately 30 feet downstream of upstream corporate limits	*1,005
Maps available for inspection at the Village Hall, 108 Courtland Street, Groton, New York.	
Highland (Town), Sullivan County (FEMA Docket No. 6719)	
Delaware River:	
At the downstream corporate limits	*577
At State Route 55	*589
Approximately 200 feet upstream of confluence of Beaver Brook	*604
Approximately 350 feet downstream of Roebling Bridge	*619
Approximately 0.5 mile upstream of confluence of Lackawaxen River	*624
Maps available for inspection at the Town Hall, Eldred, New York.	
Highland (Town), Orange County (FEMA Docket No. 6902)	
Hudson River: Entire shoreline within community	*8
Maps available for inspection at Town Hall, 213 Main Street, Highland Falls, New York 10928.	
Highland Falls (Village), Orange County (FEMA Docket No. 6902)	
Hudson River: Entire shoreline within community	*8
Maps available for inspection at the Village Hall, 180 Main Street, Highland Falls, New York.	
Hounsfield (Town), Jefferson (FEMA Docket No. 6719)	
Lake Ontario: Entire shoreline within community	*249
Maps available for inspection at the Town Hall, 240 Dodge Avenue, Sacketts Harbor, New York.	
Lenox (Town), Madison County (FEMA Docket No. 6730)	
Cowaselon Creek:	
At most downstream corporate limits	*386
Approximately 1,240' upstream of downstream corporate limits with the Village of Canastota	*392
At upstream corporate limits with the Village of Canastota	*403
Approximately 220' upstream of most upstream corporate limits	*419
Owlville Creek:	
At downstream corporate limits	*402
Upstream side of Beebe Bridge Road	*412
Upstream side of CONRAIL	*438
Approximately 300' upstream of U.S. Route 5	*466
Approximately 930' upstream of Bruce Road	*496
Canastota Creek:	
At downstream corporate limits at U.S. Route 5	*464
Approximately .38 mile upstream of U.S. Route 5	*480
At upstream corporate limits	*497
Oneida Creek:	
At confluence with Oneida Lake	*373
Approximately 300' upstream of State Route 31	*382
At first upstream corporate limits	*386
Approximately 175' upstream of Swallow Road	*397
Oneida Lake: Entire shoreline within community	*373
Maps available for inspection at the Town Hall, 205 South Peterboro, Canastota, New York.	
Palatine (Town), Montgomery County (FEMA Docket No. 6730)	
Mohawk River:	
Approximately 2.4 miles upstream of corporate limits	*298
At Falling Hill Road (extended)	*300
Most upstream corporate limits	*310
Maps available for inspection at the Town Clerk's Office, Box 254 Arnold Lane, Nelliston, New York.	
Peru (Town), Clinton County (FEMA Docket No. 6730)	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Hall, North Main Street, Peru, New York.	
Tusten (Town), Sullivan County (FEMA Docket No. 6709)	
Delaware River:	
Approximately 1.1 miles downstream of Tenmile River	*665
At the confluence of Tenmile River	*672
Approximately 100 feet upstream of CONRAIL bridge	*679
Approximately 2.4 miles downstream of U.S. Route 652 bridge	*690
Approximately 500 feet upstream of U.S. Route 652 bridge	*700
Approximately 1.9 miles upstream of U.S. Route 652 bridge	*708
At upstream corporate limits	*715
Maps available for inspection at the Town Clerk's Office, Narrowsburg, New York.	
Ulysses (Town), Tompkins County (FEMA Docket No. 6690)	
Lake Cayuga: Entire shoreline within community	*386
Maps available for inspection at the Ulysses Town Hall, Trumansburg, New York.	
Willsboro (Town), Essex County (FEMA Docket No. 6719)	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Hall, Willsboro, New York.	
Woodbury (Town), Orange County (FEMA Docket No. 6730)	
Downstream corporate limits	*289
Approximately 50 feet upstream of Interstate Route 87	*338
Downstream side of Old State Route 32	*398
Approximately 420 feet upstream of CONRAIL bridge	*432
Upstream side of Pine Hill Road	*475
Approximately 900 feet upstream of Estrada Road	*486
Maps available for inspection at the Woodbury Town Hall, Highland Mills, New York 10930.	
NORTH CAROLINA	
Bridgeton (Town), Craven County (FEMA Docket No. 6730)	
Neuse River: Within Community	*9
Maps available for inspection at the Town Hall, Bridgeton, North Carolina.	
Craven County (Unincorporated Areas) (FEMA Docket No. 6730)	
Atlantic Ocean/Pamlico Sound/Neuse River:	
About 1,500 feet northeast of the intersection of SR 1907 and S.R. 1905	*9

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At intersection of Berkentine Drive and St. Michael Drive	*9
Atlantic Ocean/Pamlico Sound/Neuse River/Trent River: Within community	*9
Atlantic Ocean/Pamlico Sound/Neuse River/Hancock Creek: Just downstream of New Bern Road	*9
Atlantic Ocean/Pamlico Sound/Neuse River/Clubfoot Creek/Mitchell Creek: Within community	*9
Maple Cypress:	
Just upstream of SR 1400	*19
Just downstream of SR 1462	*29
Mauls Swamp:	
At confluence with Swift Creek	*13
Just downstream of SR 1637	*16
Mills Branch:	
At confluence with Neuse River	*9
About 2,500 feet upstream of SR 1433	*17
Mills Branch Tributary:	
At confluence with Mills Branch	*9
Just downstream of SR 1616	*13
Mosley Creek:	
About 2,000 feet upstream of confluence with Neuse River	*20
Just downstream of SR 1264	*43
Mosley Creek Tributary:	
About 1,500 feet downstream of NC 55	*34
Just downstream of NC 55	*34
Samuels Creek: Within community	*9
Rocky Run:	
At confluence with Samuels Creek	*9
About 3,800 feet upstream of Seaboard Coast Line Railroad	*21
Scotts Creek:	
At confluence with Neuse River	*9
About 2,000 feet upstream of Airport Road	*21
Snake Branch:	
At confluence with Mitchell Creek	*9
Just downstream of SR 1711	*13
Swift Creek:	
Just upstream of SR 1482	*9
About 1.4 miles upstream of SR 1440	*14
Tucker Creek:	
About 1.5 miles downstream of U.S. Highway 70	*9
About 2,600 feet upstream of Seaboard Coast Line Railroad	*21
Village Creek:	
Just upstream of SR 1472	*20
Just downstream of NC 55	*45
Wilson Creek:	
Just upstream of SR 1278	*14
About 1,600 feet upstream of Seaboard Coast Line Railroad	*18
Maps available for inspection at the County Courthouse, P.O. Box 1425, New Bern, North Carolina.	
Havelock (City), Craven County (FEMA Docket No. 6730)	
East Prong Slocum Creek:	
At Confluence with Sandy Branch	*9
About 2,200 feet upstream of Gray Fox Road	*15
East Prong Slocum Creek Tributary:	
At Confluence with East Prong Slocum Creek	*9
About 1,150 feet upstream of Cunningham Boulevard	*20
Southwest Prong Slocum Creek: Within Community	*9
Tucker Creek: Within Community	*9
Slocum Creek: Within Community	*9
Hancock Creek: Within Community	*9
Neuse River: Within Community	*9
Maps available for inspection at the City Hall, Havelock, North Carolina.	
Morganton (City), Burke County (FEMA Docket No. 6719)	
Catawba River:	
About 0.76 mile downstream of confluence of Hunting Creek	*1,004
About 3.4 miles upstream of Independence Boulevard	*1,033
Warrior Fork: Within community	*1,014
Wilson Creek:	
At mouth	*1,014
About 0.80 mile upstream of State Road 1414	*1,082
Hunting Creek:	
At mouth	*1,006
About 3,150 feet upstream of State Road 1940	*1,105
Hunting Creek Tributary No. 1:	
At mouth	*1,032
About 3,950 feet upstream of mouth	*1,045
Canoe Creek:	
At mouth	*1,023
Just downstream of State Road 126	*1,038
Silver Creek:	
At mouth	*1,022
About 1.57 miles upstream of Interstate 40	*1,046
Little Silver Creek:	
At mouth	*1,025
About 3,750 feet upstream of Causby Road	*1,115
Bailey Fork:	
At mouth	*1,024
About 3,800 feet upstream of Interstate 40	*1,037
Sandy Run:	
At mouth	*1,038
About 2.4 miles upstream of mouth	*1,157
Fiddlers Run:	
At mouth	*1,047
Just downstream of State Road 1940	*1,124
East Prong Creek:	
At mouth	*1,043
About 1.36 miles upstream of State Road 1972	*1,106
Maps available for inspection at the City Hall, 201 West Meeting Street, Morganton, North Carolina.	
Mount Airy (City), Surry County (FEMA Docket No. 6719)	
Ararat River:	
About 3,750 feet downstream of confluence of Louills Creek	*986
About 1,200 feet upstream of Linville Road	*1,034
Louills Creek:	
At mouth	*991
About 3,850 feet upstream of West Lebanon Street	*1,051
Tumbling Rock Branch:	
At mouth	*1,027
Just downstream of Tumbling Rock Lake Dam	*1,081
Just upstream of Tumbling Rock Lake Dam	*1,102
About 1,900 feet upstream of Industrial Park Road	*1,151
Maps available for inspection at the City Hall, 300 S. Main Street, Mt. Airy, North Carolina.	
New Bern (City), Craven County (FEMA Docket No. 6730)	
Neuse River: Within community	*9
Trent River: Within community	*9
Jack Smith Creek: Within community	*9
Lawson Creek: Within community	*9
Maps available for inspection at the City Hall, New Bern, North Carolina.	
Pineville (Town), Mecklenburg County (FEMA Docket No. 6719)	
Sugar Irwin Creek:	
About 3,300 feet downstream of the confluence of McCullough Branch	*537
About 1,600 feet upstream of Pineville—Matthews Road	*542
Little Sugar Creek:	
About 2.5 miles downstream of Lancaster Highway	*540
About 0.9 mile upstream of Pineville—Matthews Road	*555
McMullen Creek:	
Just upstream of Pineville—Matthews Road	*539
Just downstream of Johnston Road	*541
Maps available for inspection at the Town Hall, 118 College Street, Pineville, North Carolina.	
Southern Shores Town), Dare County (FEMA Docket No. 6730)	
Atlantic Ocean:	
About 500 feet east of the intersection of Porpoise Run and Ocean Boulevard	*11
Along shoreline	*12
Atlantic Ocean/Currituck Sound:	
About 1,800 feet west of the intersection of 12th Avenue and Duck Road	*7
At the intersection of Birch Lane and Holly Trail	*8
Maps available for inspection at the Town Hall, Kitty Hawk, North Carolina.	
Trent Woods (Town), Craven County (FEMA Docket No. 6730)	
Atlantic Ocean/Pamlico Sound/Pamlico River/ Neuse River/ Trent River: Within community	*9
Jimmies Creek:	
At confluence with Wilson Creek	*9
Just downstream of Trent Road	*18
Morris Branch:	
At confluence with Wilson Creek	*9
Just downstream of River Road	*14
Trent River Tributary:	
At confluence with Trent River	*9
Just downstream of Longwood Drive	*17
Wilson Creek:	
At confluence with Trent River	*9
Just downstream of Trent Road	*12
Maps available for inspection at the Trent Woods Town Hall, New Bern, North Carolina.	
NORTH DAKOTA	
Center (City), Oliver County (FEMA Docket No. 6709)	
Square Butte Creek: Approximately 50 feet upstream from center of State Highway 25 Bridge	*1,967
Tributary 1: Immediately upstream of State Highway 25 Bridge	*1,978
Tributary 2: Approximately 250 feet upstream from center of State Highway 25 Bridge	*1,966
Tributary 3: Approximately 50 feet upstream from center of treatment plant access road bridge	*1,970
Tributary 4: Immediately upstream of Third Street Bridge	*1,980
Tributary 1 Overflow: Along overflow channel, approximately 300 feet west of Tributary 1	*1,972
Maps are available for review at the City Hall, 312 Lincoln Avenue North, Center, North Dakota.	
Fargo (City), Cass County (FEMA Docket No. 6709)	
Red River of the North: At center of Main Avenue	*899
Sheyenne River: Approximately 50 feet downstream from center of Interstate 94 Bridge	*904
Shallow Ponding: Between County Roads 14 and 20, west of 45th Street North	*894
Maps available for review at the Engineering Department, 306 North 4th Street, Fargo, North Dakota.	
OHIO	
Bowerston (Village), Harrison County (FEMA Docket No. 6719)	
Conotton Creek:	
About 500 feet downstream of State Route 151	*937
About 2,000 feet upstream of State Street	*941
Maps available for inspection at the Town Hall, 205 Penn Avenue, Box 46, Bowerston, Ohio.	
Enon (Village), Clark County (FEMA Docket No. 6730)	
Mad River:	
Just downstream of State Route 4	*876
Just upstream of Enon Road	*879
Mud Run:	
Just upstream of Enon-Xenia Pike	*882
About 1.1 miles upstream of Hunter Road	*995
Maps available for inspection at the Municipal Building, Enon, Ohio.	
Scio (Village), Harrison County (FEMA Docket No. 6719)	
Conotton Creek:	
About 1,200 feet downstream of Eastport Road	*966

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
About 1,400 feet upstream of Main Street	*971
Irish Creek: Within community	*971
Maps available for inspection at the Municipal Building, Scio, Ohio.	
OKLAHOMA	
Cache (City), Comanche County (FEMA Docket No. 6730)	
West Cache Creek:	
At downstream limits	*1,237
At upstream corporate limits	*1,247
Crater Creek:	
Approximately 550 feet downstream of corporate limits	*1,224
Approximately 120 feet of Old U.S. Highway 62	*1,242
Approximately 150 feet upstream of St. Louis-San Francisco Railway	*1,247
At upstream corporate limits	*1,262
Approximately 0.6 mile upstream of U.S. Highway 62	*1,275
Rock Creek:	
At Old U.S. Highway 62	*1,240
At upstream corporate limits	*1,246
Tributary A—West:	
At confluence with Tributary A	*1,239
At upstream corporate limits	*1,242
Tributary A:	
At downstream corporate limits	*1,226
Approximately 40 feet upstream of St. Louis-San Francisco Railway	*1,238
Approximately 565 feet upstream of confluence of Tributary A-West	*1,239
Tributary B:	
At downstream corporate limits	*1,244
Approximately 75 feet upstream of U.S. Highway 62 bridge	*1,250
Approximately 165 feet upstream of U.S. Highway 62 bridge	*1,255
At upstream corporate limits	*1,264
West Branch Blue Beaver Creek:	
At downstream corporate limits	*1,239
Approximately 300 feet upstream of corporate limits	*1,241
Approximately 50 feet downstream of U.S. Highway 62 bridges	*1,247
At upstream corporate limits	*1,255
Maps available for inspection at the City Hall, 520 C Avenue, Caohe, Oklahoma.	
OREGON	
Curry County (Unincorporated Areas) (FEMA Docket No. 6719)	
Sixes River: The west edge of U.S. Highway 101, 40 feet north from its intersection with Sixes River Road	*32
Rouge Road: Interseotion of Indian Creek and Jerry's Flat Road	*23
Rouge River (at Agness): The west edge of Agness Road at its intersection with Bear Camp Road	*178
Hunter Creek: 75 feet upstream from the center of Swinging Bridge Road	*57
Chetco Ricer: 100 feet downstream from the center of U.S. Highway 101	*12
Winchuck Creek: 100 feet upstream from the center of U.8. Highway 101	*14
Elk River: 80 feet downstream from the center of U.S. Highway 101	*35
Pistol River: 100 feet upstream from the center of Pistol Road	*15
Pacific Ocean at Hunter Creek: 500 feet due west from the middle of the U.S. Highway 101 and the Hunter Creek Road intersection	*17
Pacific Ocean at Winchuck River: 600 feet due west from the center of the north end of the runway at Crissy Airport	*25
Maps are available for review at the Building Department, Division of Public Services, P.0. Box 746, Gold Beach, Oregon.	
Pendleton (City), Umatilla County (FEMA Docket No. 6703)	
Umatilla River: At Main Street	*1,067
Tutuilla Creek: Approximately 100 feet upstream of the center of Tutuilla Street (County Road 382)	*1,069
McKay Creek: At the intersection of Southwest Perkins and Southwest 44th Street	*1,060
Nelson Creek: Approximately 500 feet upstream of the center of Northgate Bridge	*1,059
Patawa Creek: Approximately 470 feet upstream of the center of Tutuilla Street	*1,089
Maps available for inspection at the Planning Department, City Hall, P.O. Box 190, Pendleton, Oregon.	
Tualatin (City), Washington County (FEMA Docket No. 6703)	
Tualatin River: Along Cipole Road 1,600 feet south of Southwest Pacific Highway (West 99)	*129
Nyberg Slough: At Interstate Highway 5	*122
Maps available for review at the City Engineer's Office, 18880 SW Martinazzi Avenue, Tualatin, Oregon.	
Umatilla County (Unincorporated Areas) (FEMA Docket No. 6719)	
Umatilla River: Approximately 50 feet upstream from the center of Bridge Road	*450
South Fork Walla Walla River: Approximately 65 feet upstream from the center of South Fork Walla Walla River Road (County Road 600)	*1,977
Patawa Creek: At the Western Road oasing of Old Dump Road (County Road 991)	*1,161
Waterman Gulch: Approximately 260 feet upstream from the center of County Road 725	*1,741
Stage Gulch: Approximately 600 feet northwest along the upstream side of Union Pacific Railroad from the intersection of Union Pacific Railroad and Stage Gulch	*591
Walla Walla River: Approximately 20 feet upstream from the center of McCoy Bridge	*853
Mill Creek: Approximately 20 feet upstream from the center of Mill Creek Glen Bridge	*2,111
McKay Creek: Approximately 30 feet upstream from the center of South West Kirk Street	*1,045
Tutuilla Creek: At confluence with Umatilla River near Interstate 84	*1,024
Wildhorse Creek: Approximately 20 feet upstream from the center of Saxe Station Road	*1,161
Maps are available for review at the Planning Department, 216 South East 4th, Pendleton, Oregon.	
Wilsonville (City), Clackamas and Washington Counties (FEMA Docket No. 6696)	
Seely Ditch: 10 feet downstream of centerline of Southwest Orepac Road	*137
East Overflow Ditch: 670 feet upstream of centerline of Wilsonville Road	None
Maps available for inspection at City Hall, 30000 SW. Town Center Loop E, Wilsonville, Oregon 97070-0220.	
PENNSYLVANIA	
Cornplanter (Township), Venango County (FEMA Docket No. 6730)	
Allegheny River:	
Downstream corporate limits	*1,002
Upstream corporate limits	*1,020
Oil Creek:	
Downstream corporate limits	*1,009
Downstream side of CONRAIL downstream crossing	*1,026
Downstream side of State Route 8 upstream crossing	*1,041
Upstream side of CONRAIL upstream crossing	*1,056
Cherry Run:	
Downstream corporate limits	*1,089
Upstream side of State Route 227 upstream crossing	*1,116
Approximately 0.73 mile upstream of State Route 227 upstream crossing	*1,158
Approximately 2,420 feet downstream of Old Bankson Road	*1,200
Approximately 140 feet upstream of Old Bankson Road	*1,234
Maps available for inspection at the Township Municipal Building, Oil City, Pennsylvania.	
East Chillisquaque (Township), Northumberland County (FEMA Docket No. 6730)	
Chillisquaque Creek:	
Approximately 400 feet downstream of the downstream corporate limits	*465
At State Route 45	*469
Maps available for inspection at the Potts Grove Fire Company, Potts Grove, Pennsylvania.	
Ford City (Borough), Armstrong County (FEMA Docket No. 6730)	
Allegheny River:	
Downstream corporate limits	*78
Approximately 275 feet upstream from confluence of Fort Run	*791
Entire shoreline of Fort Run within community	*791
Maps available for inspection at the Municipal Offices, Ford City, Pennsylvania.	
Frenchcreek (Township), Venango County (FEMA Docket No. 6730)	
French Creek:	
At downstream corporate limits	*988
Confluence of Sugar Creek	*1,012
Downstream corporate limits with Utica	*1,032
Maps available for inspection at the Township Building, Franklin, Pennsylvania.	
Indiana (Borough), Indiana County (FEMA Docket No. 6730)	
Marsh Run:	
Downstream corporate limits	*1,242
Upstream side of Nixon Alley	*1,265
Upstream side of Oak Street	*1,273
Upstream corporate limits	1,286
Whites Run:	
Downstream corporate limits	*1,244
Downstream side of Klondike Avenue	*1,258
Upstream corporate limits	*1,279
Maps available for inspection at the Municipal Building, Indiana, Pennsylvania.	
Manor (Township), Armstrong County (FEMA Docket No. 6902)	
Allegheny River:	
Downstream corporate limits	*787
At upstream corporate limits	*793
Crooked Creek:	
At confluence with Allegheny River	*787
Upstream side of T-522	*790
Approximately 1,650 feet upstream of State Route 66	*796
Garrett's Run:	
At confluence with Allegheny River	*791
Upstream side of State Route 359 (3rd upstream crossing)	*828
Upstream side LR 03095	*866
Upstream side of Hawk Hollow Road	*887
Upstream side of State Route 359 (6th upstream crossing)	*920
Approximately 0.6 mile downstream of State Route 359 (7th upstream crossing)	*980
Approximately 50 feet upstream of upstream corporate limits	*1,026
Campbell Run:	
At confluence with Crooked Creek	*787
Approximately 0.4 mile upstream of confluence with Crooked Creek	*817
Fort Run:	
At confluence with Allegheny River	*791
Approximately 450 feet upstream of T-447	*804
Maps available for inspection at 116 Raceway, Ford City, Pennsylvania.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Northampton (Township), Somerset County (FEMA Docket No. 6730)	
Wills Creek:	
Approximately 560 feet downstream of L.R. 55014	*1,593
Upstream side of L.R. 55014	*1,601
Approxiamtely 200 feet upstream of Chessie System	*1,621
Fitchner Run:	
At confluence with Wills Creek	*1,603
Upstream side of access road	*1,610
Approximately 70 feet upstream of T-377	*1,628
Maps available for inspection at the Municipal Office, Glencoe, Pennsylvania.	
Rouseville (Borough), Venango County (FEMA Docket No. 6730)	
Oil Creek:	
Downstream corporate limits	*1,027
At confluence of Cherry Run	*1,030
Upstream corporate limits	*1,037
Cherry Run:	
At confluence with Oil Creek	*1,030
Upstream side of State Route 8	*1,037
Upstream side of State Route 227	*1,074
Upstream corporate limits	*1,089
Shallow Flooding:	
Area east of CONRAIL, west of State Route 8, 400 feet north of corporate limits	#2
At south corporate limits between CONRAIL and State Route 8	#1
Maps available for inspection at the Borough Building, Rouseville, Pennsylvania.	
Sugarcreek (Borough), Venango County (FEMA Docket No. 6730)	
Allegheny River:	
Downstream corporate limits	*976
Upstream corporate limits	*990
French Creek:	
Downstream corporate limits	*996
At the confluence of Sugar Creek	*1,012
Approximately 1.5 miles upstream of Sugar Creek confluence	*1,020
Upstream corporate limits	*1,027
Sugar Creek:	
Confluence with French Creek	*1,012
Approximately 170 feet upstream of Sugar Creek Road	*1,027
Downstream side of U.S. Route 322	*1,060
Upstream side of McCleary Road	*1,062
Upstream corporate limits	*1,095
Maps available for inspection at the Borough Manager's Office, Pennsylvania.	
Summit (Township), Crawford County (FEMA Docket No. 6730)	
Inlet Run:	
At confluence with Conneaut Lake	*1,075
Upstream side of State Route 18	*1,090
Approximately 1,825 feet upstream of LR 20046	*1,127
Maps available for inspection at the Township Building, Summit, Pennsylvania.	
White (Township), Indiana County (FEMA Docket No. 6730)	
Stoney Run:	
Downstream of corporate limits	*1,070
Upstream side of CONRAIL first crossing	*1,115
Approximately 0.3 mile upstream of Indian Springs Road	*1,177
At confluence of Whites and Marsh Run	*1,238
Marsh Run:	
At confluence with Stoney Run	*1,238
Approximately 528 feet upstream of corporate limits	*1,242
Whites Run:	
At confluence with Stoney Run	*1,238
At upstream corporate limits	*1,244
McCarthy Run:	
At confluence with Stoney Run	*1,140
Upstream side of Indian Springs Road	*1,200
Upstream side of Rustic Lodge Road	*1,245
Approximately 800 feet upstream of Warren Road	*1,265
Approximately .63 mile upstream of Benjamin Franklin Road	*1,302
Maps available for inspection at the Township Building, White, Pennsylvania.	
SOUTH CAROLINA	
Unincorporated Areas of Charleston County (FEMA Docket No. 6730)	
Atlantic Ocean:	
At Bream Drive	*8
About 3500 feet east of the intersection of Davidson Road and Parkers Ferry Road	*8
Just upstream of River Road bridge over Cedar Creek	*8
At the mouth of MacBeth Creek	*9
Along Wando River from confluence of Rathall Creek to the confluence of Mill Creek	*11
At the mouth of Church Creek	*12
At the mouth of Alligator Creek	*13
At the mouth of Dawho River	*15
At the mouth of Toogoodoo Creek	*15
At the mouth of Schooner Creek	*17
At the mouth of Venning Creek	*18
Along shoreline from about 1.0 mile northeast of Sandy Point to the Charleston County—Georgetown County boundary	*19
Along shoreline from Dewees Inlet to Northeast Point	*19
Along shoreline from about 2 miles southwest of the mouth of Captain Sams Inlet to the mouth of Stono Inlet	*19
Along shoreline from Jeremy Inlet to just northeast of the mouth of South Creek	*20
Along shoreline from just east of the mouth of Bull River to Sandy Point	*20
Along shoreline of Bull Bay from just west of mouth of Saltpond Creek to the mouth of Harbor River	*22
Sawmill Creek:	
At downstream county boundary	*46
At upstream county boundary	*54
Maps available for inspection at the County Courthouse, 2 Courthouse Square, Charleston, South Carolina.	
Colleton County (Unincorporated Areas) (FEMA Docket No. 6730)	
Atlantic Ocean:	
Along Edisto River from about 2.7 miles downstream of Route 17 to about 6.4 miles upstream of U.S. Route 17	*8
At mouth of Two Sisters Creek	*22
Ireland Creek:	
At mouth	*32
Just upstream of Stevens Road	*52
Great Swamp:	
About 2.6 miles downstream of U.S. Route 17A	*23
About 0.95 miles upstream of U.S. Route 17A	*35
Maps available for inspection at the County Courthouse, P.O. Box 1176, Walterboro, South Carolina.	
Folly Beach (Township), Charleston County (FEMA Docket No. 6730)	
Atlantic Ocean:	
At intersection of Center Street and Indian Avenue	*12
At mouth of Second Sister Creek	*15
Along shoreline	*19
Maps available for inspection at the City Hall, P.O. Box 22, Folly Beach, South Carolina.	
Greenwood County (Unincorporated Areas) (FEMA Docket No. 6719)	
Hard Labor Creek:	
About 2,100 feet downstream of U.S. Route 221	*463
Just downstream of Seaboard Coast Line Railroad	*576
Wilson Creek:	
Just upstream of Siloam Church Road	*449
Just downstream of Kateway Road	*515
Just upstream of Kateway Road	*520
Just downstream of U.S. Route 25 Bypass	*530
About 1,250 feet upstream of U.S. Route 25 Bypass	*536
Stockman Branch:	
At mouth	*500
About 0.9 mile upstream of mouth	*526
Coronaca Creek:	
At mouth	*468
Just downstream of U.S. Route 221	*486
Just upstream of U.S. Route 221	*491
About 1.6 miles upstream of State Route 254	*548
Rocky Creek:	
At mouth	*495
Just downstream of Center Street	*595
Just upstream of Center Street	*608
Maps available for inspection at the County Courthouse, Room 203, Greenwood, South Carolina.	
Marion (City), Marion County (FEMA Docket No. 6730)	
Catfish Canal:	
About 4,000 feet downstream of U.S. Route 76	*53
About 1,000 feet upstream of English Park Road	*56
Smith Swamp:	
About 2,500 feet downstream of State Route 19	*59
About 300 feet downstream of State Route 19	*61
Maps available for inspection at the Town Hall, P.O. Box 1190, Marion, South Carolina.	
McClellanville (Town), Charleston County (FEMA Docket No. 6730)	
Atlantic Ocean:	
About 400 feet northwest of the intersection of U.S. Route 17 and State Route 45	*14
At the intersection of Morrison Street and Baker Street	*15
Along shoreline of Intracoastal Waterway	*19
Maps available for inspection at the City Hall, 405 Penkincy Street, McClellanville, South Carolina.	
Walterboro (City), Colleton County (FEMA Docket No. 6730)	
Great Swamp:	
About 1.97 miles downstream of U.S. Route 17A	*25
Just upstream of U.S. Route 17A	*34
Ireland Creek:	
At mouth	*32
About 0.6 mile upstream of U.S. Route 15	*43
Maps available for inspection at the City Hall, P.O. Box 109, Walterboro, South Carolina.	
TENNESSEE	
Covington (City), Tipton County (FEMA Docket No. 6719)	
Town Creek:	
About 700 feet downstream of Flat Iron Road	*279
About 0.8 mile upstream of Hope Street	*294
Lateral A:	
At mouth	*282
About 500 feet upstream of College Street	*295
Maps available for inspection at the City Hall, P.O. Box 768, Covington, Tennessee.	
Graysville (City), Rhea County (FEMA Docket No. 6709)	
Roaring Creek:	
About 1,850 feet downstream of Harrison Street	*730
About 3,700 feet upstream of Harrison Street	*802
Sale Creek:	
About 1,690 feet downstream of U.S. Route 27	*722
About 1,850 feet upstream of Dayton Avenue	*736
Maps available for inspection at the City Hall, P.O. Box 100, Graysville, Tennesssee.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Halls (Town), Lauderdale County (FEMA Docket No. 6719)	
North Creek:	
About 1,100 feet downstream of Illinois Central Gulf Railroad	*289
Just upstream of Wilson Street	*306
Sumrow Creek:	
Just downstream of Illinois Central Gulf Railroad	*293
About 600 feet upstream of State Route 88	*298
Maps available for inspection at the City Hall, Halls, Tennessee.	
Kimball (Town), Marion County (FEMA Docket No. 6730)	
Kimball Cove Branch:	
Just downstream of Interstate 24	*614
Just downstream of Lee Highway	*644
Just upstream of Lee Highway	*653
About 1.0 mile upstream of Interstate 24	*802
Raulston Branch:	
Just downstream of Dixie Highway	*617
About 0.45 mile upstream of Old U.S. Route 64	*698
Battle Creek:	
About 0.5 mile downstream of Lee Highway	*614
About 1.6 miles upstream of Lee Highway	*617
Tennessee River:	
About 1.6 miles downstream of confluence of Glover Creek	*614
About 0.62 miles upstream of confluence of Glover Creek	*615
Maps available for inspection at the City Hall, P.O. Box 367, Jasper, Tennessee.	
Ripley (Town), Lauderdale County (FEMA Docket No. 6719)	
Hyde Creek:	
About 1.28 miles downstream of U.S. Route 51 Bypass	*328
About 500 feet upstream of Illinois Central Gulf Railroad	*339
Cane Creek:	
Just downstream of State Route 19	*322
About 500 feet upstream of East Webb Avenue	*338
Maps available for inspection at the City Hall, 110 South Washington, Ripley, Tennessee.	
Spring Hill (City), Maury & Williamson Counties (FEMA Docket No. 6730)	
McCutcheon Creek:	
At mouth	*656
About 1,400 feet upstream of Duplex Road	*707
McCormack Branch:	
At mouth	*683
About 375 feet upstream of Beechcroft Road	*740
Orphanage Branch:	
At mouth	*683
Just upstream of Louisville and Nashville Railroad	*756
Maps available for inspection at the City Hall, Springhill, Tennessee.	
TEXAS	
Denton County (FEMA Docket No. 6730)	
Elm Fork Trinity River below Lewisville Lake:	
At County boundary	*448
At confluence with Indian Creek	*452
Elm Fork Trinity River above Lewisville Lake:	
At confluence with Lewisville Lake	*537
Approximately 120 feet upstream of FM 428	*542
At downstream side of Ray Roberts dam	*553
Denton Creek:	
Approximately 100 feet upstream of State Route 121	*468
Approximately 0.6 mile upstream of confluence of Baker's Branch	*472
Marshall Branch:	
At confluence with Grapevine Lake	*564
At downstream side of State Route 114	*596
Timber Creek:	
Approximately 350 feet downstream of the County boundary	*597
Approximately 700 feet upstream of Woodland Trail Street	*629
Furneaux Creek:	
Approximately 50 feet downstream of Old Denton Road (FM 2281)	*467
Approximately 0.5 mile upstream of Old Denton Road	*472
Dudley Branch:	
At confluence with Elm Fork Trinity River	*451
Approximately 2.4 miles upstream of the Missouri-Kansas-Texas Railroad	*474
Approximately 50 feet upstream of Denton Road (FM 2281)	*477
Indian Creek:	
Approximately 5.2 miles upstream of confluence with Elm Fork Trinity River	*490
At upstream County boundary	*620
Hickory Creek:	
At confluence with Lewisville Lake	*537
Approximately 50 feet downstream of FM 1830	*562
Approximately 125 feet downstream of northbound lanes of Interstate Route 35W	*585
At confluence of North Hickory Creek	*618
Bryant Branch:	
Approximately 550 feet downstream of FM 2181	*540
Approximately 100 feet upstream of FM 2181	*547
Loving Branch:	
At confluence with Hickory Creek	*543
Approximately 50 feet upstream of Mayhill Road (FM 407)	*614
Fincher Branch:	
At confluence with Hickory Creek	*547
At downstream side of Gibbons Road	*623
Fletcher Branch:	
At confluence with Hickory Creek	*551
At downstream side of El Paso Street	*611
Dry Fork Hickory Creek:	
At confluence with Hickory Creek	*579
At Jim Crystal Road	*644
Approximately 0.7 mile upstream of U.S. Route 380	*665
Stream DF-1:	
At confluence with Dry Fork Hickory Creek	*590
At most upstream County boundary	*607
North Hickory Creek:	
At confluence of Hickory Creek	*618
At upstream side of U.S. Route 380	*649
Approximately 50 feet upstream of FM 156	*675
Stream LC-1:	
Approximately 520 feet upstream of Shady Shores Road	*560
Approximately 730 feet upstream of Shady Shores Road	*560
Pecan Creek:	
At confluence with Lewisville Lake	*537
At downstream side of Mayhill Road	*571
Stream PEC-1:	
At confluence with Pecan Creek	*537
Approximately 0.5 mile upstream of Missouri-Kansas-Texas Railroad crossing	*581
Cooper Creek:	
At confluence with Lewisville Lake	*537
At downstream side of Mayhill Road	*573
Culp Branch:	
At confluence with Elm Fork Trinity River	*537
At upstream side of FM 428	*573
Approximately 200 feet upstream of most upstream crossing of FM 2153	*645
Maps available for inspection at the Denton County Planning Department, 300 East McKinney, Denton, Texas.	
Double Oak (Town), Denton County (FEMA Docket No. 6719)	
Timber Creek:	
Approximately 500 feet downstream of Skillern Lusk Road	*616
At upstream corporate limits	*624
Approximately 40 feet downstream of Forest Lane	*625
Approximately 700 feet upstream of Woodland Trail Drive	*629
Maps available for inspection at the Town Hall, 1100 Cross Timbers Road, Double Oak, Texas.	
Willow Park (City), Parker County (FEMA Docket Nos. 6696 and 6719)	
Clear Fork Trinity River:	
Approximately 260 feet downstream of East Bankhead Drive	*833
At upstream side of Kings Gate Road	*840
At upstream corporate limits	*845
Approximately 2,560 feet downstream from Lake Weatherford Dam	*858
Squaw Creek:	
Approximately 750 feet downstream of Sam Bass Road	*840
At downstream side of Squaw Creek Reservoir	*845
Stream CF(WP)-1:	
At downstream corporate limits	*841
At confluence of Stream CF(WP)-1A	*876
At upstream side of Ranch House Road	*906
At upstream side of Surrey Lane	*937
At downstream side of Valley Court (extended)	*953
Stream CF(WP)-1A:	
At confluence with Stream CF(WP)-1	*876
At upstream side of Lariat Court (extended)	*893
At upstream side of Ranch House Road	*917
Lake Weatherford: Entire shoreline affecting community	*909
Maps available for inspection at the City Hall, 101 Stage Coach Trail, Willow Park, Texas.	
VERMONT	
Johnson (Town), Lamoille County (FEMA Docket No. 6730)	
Lamoille River:	
Downstream corporate limits	*467
Confluence of Smith Brook	*484
At Village of Johnson downstream corporate limits	*495
Downstream side of Vermont Northern Railway	*527
Upstream corporate limits	*535
Gihon River:	
Downstream corporate limits	*566
Approximately 0.7 mile upstream of Town Highway 33	*621
Bell Brook:	
Confluence with Gihon River	*577
Approximately 0.1 mile upstream of Town Highway 32	*634
Foot Brook:	
At confluence with Lamoille River	*488
Approximately 635 feet upstream of State Route 15	*503
Maps available for inspection at the Town Clerk's Office, Johnson, Vermont.	
Johnson (Village), Lamoille County (FEMA Docket No. 6730)	
Lamoille River:	
At downstream corporate limits	*494
Downstream side of Railroad Street	*496
At upstream corporate limits	*497
Gihon River:	
At confluence with Lamoille River	*496
Upstream side of School Street	*526
At upstream corporate limits	*565
Maps available for inspection at the Town Clerk's Office, Johnson, Vermont.	
VIRGINA	
Lee County (FEMA Docket No. 6709)	
Straight Creek:	
At confluence with North Fork Powell River	*1,435
At State Route 352	*1,471
At second downstream Southern Railroad crossing	*1,477
Downstream corporate limit of Town of St. Charles	*1,521
Upstream corporate limit of Town of St. Charles	*1,538
At confluence of Gin Creek	*1,586
At downstream side of first upstream Southern Railway crossing	*1,668
Approximately 900' upstream of confluence of Miller Cove Creek	*1,750
Gin Creek:	
At confluence with Straight Creek	*1,586

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At downstream County Road	*1,615
At State Route 635	*1,630
Approximately 400' upstream of upstream County Road	*1,736
Big Branch:	
At confluence with Straight Creek	*1,520
At State Route 628	*1,592
Approximately 0.41 mile upstream of State Route 628	*1,636
Baileys Trace:	
At Corporate Limit of Town of St. Charles	*1,538
At confluence of Fawn Branch	*1,571
Approximately 50' upstream of State Route 717	*1,635
Approximately 0.29 mile upstream of State Route 717	*1,661
Wallen Creek:	
Approximately 0.31 mile upstream of State Routes 612 and 826 extended	*1,567
Approximately 0.5 mile southwest on State Route 612 from County Road Intersection	*1,598
At confluence of Dry Creek	*1,614
Approximately 0.28 mile upstream of U.S. Routes 58 and 421	*1,629
Dry Creek:	
At confluence with Wallen Creek	*1,614
Upstream side of U.S. Route 58 and 421	*1,640
Upstream side of State Route 738	*1,745
Approximately 0.25 mile upstream of State Route 738	*1,779
North Fork Clinch River:	
At County Boundary	*1,484
Upstream side of State Route 611	*1,515
At Southern Railway	*1,535
Mud Creek:	
At State Route 708	*1,461
Upstream side of State Route 622	*1,471
Approximately 0.3 mile upstream of State Route 622	*1,476
Powell River:	
Approximately 1,000' southeast from 621 and 845 State Route Junction	*1,413
At Alternate U.S. Route 58	*1,405
Approximately 0.61 mile downstream of Alternate U.S. Route 58	*1,398
At State Route 619	*1,391
Approximately 1 mile upstream of U.S. Route 421	*1,348
At U.S. Route 421 upstream side	*1,344
Approximately 0.9 mile downstream of U.S. Route 421	*1,339
Poor Valley Branch:	
At confluence with Martin Creek	*1,393
Approximately 525' downstream of Louisville and Nashville Railroad	*1,406
Indian Creek:	
Approximately 750' downstream of U.S. Route 58	*1,309
At confluence with Dry Branch	*1,321
Downstream side of State Route 684	*1,327
Upstream side of Mill Dam at State Route 690	*1,346
Upstream side of Mill Dam at State Route 698	*1,365
Upstream side of State Route 687	*1,373
At confluence with Roaring Branch	*1,389
Approximately 630' upstream of Louisville and Nashville Railroad	*1,400
Martin Creek:	
Approximately 350' downstream of confluence of Poor Valley Branch	*1,391
At U.S. Route 58	*1,402
Approximately 750' upstream from U.S. Route 58	*1,404
Cane Creek:	
At corporate limits of Town of Pennington Gap	*1,369
Downstream side of State Route 643	*1,391
Approximately 1 mile upstream of first downstream crossing of U.S. Alternate Route 58	*1,411
Approximately 0.5 mile downstream of State Route 644	*1,430
At State Route 644 and U.S. Alternate 58	*1,455
Approximately 350' upstream of U.S. Alternate Route 58	*1,466
North Fork Powell River:	
Confluence with Powell River	*1,345
At State Route 633	*1,352
Downstream corporate limits of Town of Pennington Gap	*1,353
Second downstream corporate limits of Town of Pennington Gap	1,355
Approximately 1,000' southeast from State Route 621 on State Route 633	*1,358
At State Route 621 (new)	*1,376
At Southern Railway	*1,401
Approximately 200' downstream of confluence of Bobs Branch	*1,435
Fawn Branch:	
At confluence with Baileys Trace	*1,571
Upstream side of County Road	*1,618
Upstream side of State Route 637	*1,646
Approximately .57 mile upstream of State Route 637	*1,756
Dry Branch:	
At confluence with North Fork Powell River	*1,351
At confluence of Ely Creek	*1,389
Approximately 100' downstream of County Road	*1,482
Poor Valley Creek:	
At confluence with North Fork Powell River	*1,371
Farm Road upstream side	*1,429
Approximately 0.24 mile upstream of second crossing of State Route 621	*1,600
Maps available for inspection at the County Administrator's Office, Jonesville, Virginia.	
WEST VIRGINIA	
Elkins (City), Randolph County (FEMA Docket No. 6730)	
Tygart Valley River:	
Approximately 1,700 feet downstream of cutoff channel	*1,912
Downstream side of outlet works	*1,913
Upstream side of outlet works	*1,912
Upstream corporate limits	*1,912
Craven Run:	
Downstream corporate limits	*1,910
Upstream corporate limits	*1,940
Maps available for inspection at the City Hall, 401 Davis Avenue, Elkins, West Virginia.	
WISCONSIN	
Dousman (Village), Waukesha County (FEMA Docket No. 6730)	
Bark River:	
About 0.62 mile downstream of Main Street	*858
About 750 feet upstream of U.S. Highway 18	*865
Maps available for inspection at the Clerk Treasurer's Office, Village Hall, Box 325, 118 South Main Street, Dousman, Wisconsin.	
New Berlin (City), Waukesha County (FEMA Docket No. 6719)	
Calhoun Creek:	
Just upstream of College Avenue	*816
About 150 feet upstream of College Avenue	*821
Just downstream of State Highway 15	*875
Dakota Street Tributary:	
At mouth	*786
About 1,500 feet upstream of mouth	*805
Deer Creek:	
Just upstream of Greenfield Avenue	*840
About 1.1 miles upstream of National Avenue	*873
Root River:	
Just upstream of South 124th Street	*761
About 1.3 miles upstream of South 124th Street	*821
South Branch Underwood Creek:	
About 0.34 mile downstream of Elm Grove Road	*761
About 0.46 mile upstream of Arcadian Drive	*826
South 130th Street Tributary:	
At mouth	*764
About 0.33 mile upstream of South 128th Street	*783
West Branch Root River:	
Just upstream of South 124th Street	*751
Just upstream of Sunny Slope Road	*827
Poplar Creek:	
About 0.36 mile downstream of Arcadian Drive	*830
Just downstream of Cleveland Avenue	*851
Just upstream of Cleveland Avenue	*859
Just downstream of Coffee Road	*868
Upper Kelly Lake Tributary:	
At mouth	*80
About 1,000 feet upstream of Radisson Drive	*85
Upper Kelly Lake: Shoreline	*80
Maps available for inspection at the City Planners's Office, City Hall, 16000 West National Avenue, New Berlin, Wisconsin.	

Issued: February 2, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-2494 Filed 2-6-87; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, 20, 22, 25, and 90

[General Docket Nos. 84-1231, 1233 and 1234; RM-4812, 4829 and 4247]

Amendments of the Rules Concerning Cellular Communications Systems and Private Land Mobile Frequencies

AGENCY: Federal Communications Commission.

ACTION: Petitions for reconsideration; extension of reply comment period.

SUMMARY: This Order extends the time period in which parties may reply to filings submitted in response to eight petitions for reconsideration of the *Report and Order* in General Docket Nos. 84-1231, 84-1233, and 84-1234 (51 FR 37398, 10/22/86). This extension is necessary due to the substantial amount of factual and legal material filed in opposition to the petitions for reconsideration.

DATES: Reply comments may now be filed on or before February 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, Federal Communications Commission, Washington, DC 20554, (202) 653-8116.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 87-2518 Filed 2-6-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 25

[Gen. Docket 84-1234]

Mobile Satellite Service; Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services

AGENCY: Federal Communications Commission.

ACTION: Policies and procedures; Report and Order.

SUMMARY: The Commission has established policies and procedures to govern the licensing of a mobile satellite service (MSS) system. This action follows a Notice of Proposed Rulemaking, 50 FR 8149 (February 28, 1985), proposing to allocate frequencies for this service and to estab1ish associated licensing policies, and a final rule allocating frequencies. 51 FR 37398 (October 22, 1986). This action directs qualified and willing entities with MSS applications currently on file to negotiate a joint venture contract and file an amended mobile satellite system application to be reviewed by the FCC.

EFFECTIVE DATE: The policies set forth herein shall be effective March 12, 1987.

FOR FURTHER INFORMATION CONTACT: Fern Jarmulnek or Cecily Holiday, Satellite Radio Branch, Common Carrier Bureau, (202) 634-1624.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, Gen. Docket 84-1234, adopted December 19, 1986 and released January 26, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Second Report and Order

In 1984, the Federal Communications Commission issued a *Notice of Proposed Rulemaking* (*Notice*), 50 FR 8149 (February 28, 1985), proposing to allocate frequencies for a mobi1e satellite service (MSS) and to establish associated licensing policies and procedures. In addition to the extensive comments filed, MSS system applications were filed by Global Land Mobile Satellite, Inc., Globesat Express, Hughes Communications Mobile Satellite Services, Inc., MCCA American Satellite Service Corporation, McCaw Space Technologies, Inc., Mobile Satellite Corporation, Mobile Satellite Service, Inc., North American Mobile Satellite, Inc., Omninet Corporation, Satellite Mobile Telephone Company, Skylink Corporation, and Wismer & Becker/Transit Communications, Inc. On July 24, 1986 the FCC allocated frequencies for the provision of MSS. 51 FR 37398 (October 22, 1986).

By this *Second Report and Order*, the FCC adopted policies and procedures for the licensing of a mobile satellite system. The FCC concluded that joint ownership of a single MSS system would best serve the needs of MSS users in the most expeditious manner possible. First, the FCC decided that only one MSS system would be authorized to operate on the allocated frequencies. The FCC stated that none of the applicants proposed systems capable of sharing the same frequencies with other systems, and noted that the technology that would permit this is not currently available at a reasonable cost. Moreover, the FCC found that it was inadvisable to divide the allocated frequencies to accommodate multiple MSS systems. The FCC agreed with the majority of applicants who claimed that it is essential that an MSS system be used to the fullest extent possible if these systems are to be economically viable and the widest range of users served. Further, the FCC found that the development of sharing criteria and the implementation of priority access for AMSS(R) requirements would be facilitated by involving only one MSS licensee.

Having determined that only one MSS system would be authorized, the FCC found that a multi-ownership srrangement for the system would be more apt to meet its goals than any other licensing alternative. It said a consortium would permit broad participation by competing, qualified applicants and the expeditious development of a service that is most responsive to the needs of the various users targeted by the different applicants.

The FCC instructed those entities with applications currently on file to form a consortium and file an amended application for a joint MSS license by July 27, 1987. Participation in the consortium was conditioned on the applicant's ability and willingness to help finance the estimated $400 million MSS system. The FCC stated that because implementation of the system would be delayed if members of the consortium did not have the necessary financing, it would require each applicant to contribute its share of the financing at the outset. Rather than holding time-consuming hearings regarding an applicant's financial qualifications, each applicant was required to make an initial $5 million cash contribution to participate in the consortium. Pending applicants wishing to participate in the consortium were required to place this amount in an escrow account no later than April 13, 1987.

Since only one MSS license would be granted, the Commission stated that the MSS space segment operator would be regulated as a common carrier. However, because there appears to be, at least for some of the proposed MSS services, substitute services available, and because the service is in a developmental stage, the FCC said it would classify the MSS licensee as nondominant at this time, subject to streamlined tariff filing and facilities authorizations procedures. The FCC indicated it would reevaluate this decision after the system is in operation.

The Commission further said it would preempt state regulation over technical standards, entry and rate regulation of the space segment. Since only one MSS license would be authorized to provide service nationwide, permitting states to impose their individual regulatory schemes over the space station licensee would not only be impractical but would jeopardize the operation of the system. Thus, the FCC said it would impose an open access requirement, streamlined regulatory regime and other technical and entry standards on the space segment licensee.

With respect to the ground segment, i.e., the gateway station and user unit licensees or resellers that provide service to end users, the FCC said it would not preempt state regulation of any intrastate common carrier services within the meaning of Section 2(b) of the Communications Act. Although the FCC indicated that preemption would be proper for interstate MSS services, it said it would not reach definitive conclusions regarding preemption until the MSS system is implemented and a specific service is before it for review.

Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

Paperwork Reduction Act

The requirements contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified requirement on the public. This new requirement relates only to the exhibit

required to be submitted with applications for MSS user units to demonstrate compatibility with the MSS system protocol. All other information requirements have been previously approved by the Office of Management and Budget.

Ordering Clauses

Accordingly, pursuant to sections 4(i) and 303(r) of the Communications Act, 47 U.S.C. 154(i) and 303(r), *It Is Ordererd* that the applicants that have system applications currently under consideration, *i.e.*, those referenced in the caption of this order, may form a consortium and file an amended application for a joint mobile satellite system license in accordance with the following requirements and consistent with the other policies set forth in this order:

(a) Applicants wishing to participate in the consortium must make an initial $5 million cash contribution and place this sum in an escrow account no later than April 13, 1987. These applicants shall notify the Commission and all other applicants at the time the deposit is made.

(b) The consortium must develop a joint ownership structure with ownership interests proportional to the contributions of the participant. The joint ownership contract, including FCC Form 430, and a joint amendment containing the information specified in Appendix B to the *1983 Processing Order*, 54 Rad. Reg. 2d (P&F) 565 (1983), must be submitted to the Commission no later than July 27, 1987.

It Is Further Ordered that the above-referenced applications of any applicant not making an initial contribution to the consortium by the required date will be denied for noncompliance with the Commission's policies.

List of Subjects in 47 CFR Part 25

Satellite radio communication, Satellites.

William J. Tricarico,

Secretary.

[FR Doc. 87-2354 Filed 2-6-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-137; RM-5176]

Radio Broadcasting Services; Montauk, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 284A to Montauk, New York, as the community's first local FM service, at the request of Markey Broadcasting Company. The channel can be allocated without the imposition of a site restriction. With this action, this proceeding is terminated.

DATES: *Effective* March 9, 1987. The filing window for applications will open on March 10, 1987, and close on April 8, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-137, adopted December 4, 1986, and released January 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b) Table of Allotments is amended by adding an entry for Montauk, New York, Channel 284A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2372 Filed 2-6-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-85; RM-5186, 5437]

Radio Broadcasting Services; Waco and Clifton, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 233A to Waco, Texas, as that community's fifth FM channel at the request of Kennelwood Broadcasting Company. In addition, Channel 277A is allotted to Clifton, Texas, as that community's first FM service at the request of Clifton Broadcasting Company. Channel 233A requires a site restriction of 10.0 kilometers (6.3 miles) northeast of Waco. Also the window periods for filing applications on Channel 233A at Waco will be announced at a later date. With this action, this proceeding is terminated.

DATES: Effective March 6, 1987. The window period for filing applications on Channel 277A at Clifton, Texas will open on March 9, 1987, and close on April 6, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-85, adopted December 16, 1986, and released January 21, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, the entry for Waco, Texas, Channel 233A is added, and an entry for Clifton, Texas, Channel 277A is added.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2517 Filed 2-6-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 60600-6130]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) closes the commercial fishery in the exclusive economic zone (EEZ) for king mackerel from the Gulf of Mexico migratory group in the eastern and western allocation zones. The Regional Director, Southeast Region, NMFS, has determined that the commercial allocations of 0.6 million pounds for the eastern allocation zone and 0.27 million pounds for the western allocation zone have been reached. This closure will ensure that the commercial allocation for king mackerel from the Gulf migratory group is not exceeded during the current fishing year for these zones.

EFFECTIVE DATE: Closure is effective 2400 hours local time, February 4, 1987, until 2400 hours local time, June 30, 1987.

FOR FURTHER INFORMATION CONTACT: William N. Lindall, Jr., 813-893-3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) was developed by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations appearing at 50 CFR Part 642. Amendment 1 to the FMP, which went into effect on September 22, 1985 (50 CFR 34840, August 28, 1985), established separate allocations for the Gulf and Atlantic migratory groups of king mackerel.

Tagging studies indicate that the Gulf migratory group extends from the U.S./Mexico border, across the Gulf, through the Keys, and up the east coast of Florida, migrating farther north in winter than in summer. For management purposes, its extent is defined as the latitude of the Collier/Monroe County, Florida, boundary (25°48′ N.) from April 1 through October 31; and of the Volusia/ Flagler County, Florida, boundary (29°25′ N.) from November 1 through March 31.

The Councils set the catch limit for the Gulf migratory group for the fishing year (July 1, 1986, through June 30, 1987) at 2.9 million pounds. The recreational quota is 1.97 million pounds and the commercial quota is 0.93 million pounds. The commercial quota is further divided into quotas of 0.06 million pounds for purse seines; 0.6 million pounds for the eastern allocation zone; and 0.27 million pounds for the western allocation zone. When a quota is reached, that sector of the fishery will be closed for the remainder of the fishing year. Permits are required for persons fishing under a commercial quota and bag limits remain in effect for recreational fishermen. Recreational bag limits for charter vessels are three fish per person per trip (excluding captain and crew) or two fish per person per trip (including captain and crew), whichever is greater. The bag limit for private recreational vessels is two fish per person per trip.

The dividing line between the eastern and western allocation zones begins at the Florida-Alabama State line (30°16′53″ N. latitude, 87°31′06″ W. longitude) and runs due south to its intersection with the outer limit of the EEZ.

The Secretary is required under § 642.22 to close any segment of the king mackerel fishery when its annual allocation or quota has been harvested, by publishing a notice in the **Federal Register.** The Regional Director has determined, based on the most recently reported catch figures, that the commercial allocations of the Gulf migratory group of king mackerel in the eastern and western allocation zones have been harvested. Hence, commercial fishing for king mackerel from the Gulf migratory group in these allocation zones must cease and nets must be out of the water at 2400 hours local time, February 4, 1987.

The closure will remain in effect until 2400 hours local time, June 30, 1987, the end of the current fishing year for the Gulf migratory group of king mackerel.

During the period of the closure, the purchase, barter, trade, or sale of Gulf migratory group king mackerel taken from these zones of the EEZ, including those harvested under the recreational bag limit, is illegal. This prohibition does not apply to trade in king mackerel harvested, landed, bartered, traded, or sold prior to the closure and held in cold storage by dealers and processors.

Vessels with permits to fish under commercial quotas, except charterboats, are prohibited from fishing under the recreational bag limit. Purse seining for Gulf migratory group king mackerel is under separate quota and may continue until the purse seine quota is reached.

This action is required by 50 CFR 642.22, and complies with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: February 4, 1987.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 87-2664 Filed 2-4-87; 4:43 pm]

BILLING CODE 3510-22-M

50 CFR Part 652

[Docket No. 60229-6072]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of surf clam fishery time adjustment.

SUMMARY: NOAA issues this notice to specify allowable fishing time for vessels harvesting surf clams in the Mid-Atlantic Area of the exclusive economic zone. Three six-hour fishing periods may be scheduled during the remainder of the first quarter of 1987. This action will provide greater flexibility to operators in the use of fishing time during the period. The intended effect is to match fishing effort to the available quota for the area.

EFFECTIVE DATES: February 8 through April 4, 1987.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, 617-281-3600, ext. 263.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries contain at § 652.22(a)(3) a provision allowing the Regional Director to revise allowable fishing times to promote fishing for surf clams throughout the year with a minimum of changes. Experience during 1986 made it clear that even with only six hours of fishing time every other week, the 1987 surf clam quota for the Mid-Atlantic Area would be exceeded substantially unless closures of more than two months occurred.

The Regional Director and the Mid-Atlantic Fishery Management Council (Council) both considered reducing fishing time to six hours every three weeks. Negative reaction to that proposal from many in the industry led the Regional Director and Council to seek an alternative. The Regional Director has decided, with the unanimous support of the Council, to exercise his authority under § 652.22(a)(3) to allocate fishing time by

quarter and allow each operator the maximum flexibility possible to schedule that time to his best advantage.

Each operator is allotted 18 hours of fishing time for the remainder of the first quarter (February 8 through April 4, 1987). That time must be scheduled in three six-hour periods, which may be taken on any three separate days during the normal daily and weekly surf clam fishing times established in § 652.22(a)(1), (2) and (3). New letters of authorization required under § 652.22(a)(2) have been provided to vessel owners to carry out this effort management program. Each operator must select each six-hour fishing period at least seven days in advance of the intended date of operation by calling the telephone number for the area of operation: For New Jersey; 609–390–8303; for Delmarva: 301–546–8714. Immediately after the period has been scheduled, the operator must write the date of the period in indelible ink on the letter of authorization. No change in period is allowed once scheduled, except that the make-up provisions contained at § 652.22(a)(4) will apply during the season and under the conditions specified in that paragraph of the regulations. The letter of authorization must be retained on board the vessel for inspection through April 2, 1987.

The Regional Director and the Council will, with industry advice, review the results of this program at the end of the first quarter. An effort control program for the second quarter will be specified before the start of that quarter.

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is in compliance with Executive Order 12291.

(16 U.S.C. 1801 et seq.)

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: February 3, 1987.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 87–2641 Filed 2–6–87; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 652

[Docket No. 60229–6072]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed reopening of surf clam closed areas and public hearings; request for comments.

SUMMARY: NOAA proposes to reopen all three of the areas currently closed to surf clam fishing due to the presence of small surf clams, and invites public review and comment on the proposal. Hearings are scheduled to permit presentation of additional information about the proposed reopenings. The area reopenings will allow harvest of surf clams which have until now been protected to allow them to grow to produce greater yields.

DATES: Comments will be accepted through Fehruary 28, 1987. The public hearings will be held on February 13 and 14, 1987, at 7:30 p.m. and 2:00 p.m., respectively.

ADDRESSES: Comments should be sent to National Marine Fisheries Service, 2 State Fish Pier, Gloucester, MA 01930–3097.

The public hearing at 7:30 p.m. on February 13, 1987, will be held at the Cape May County Extension Education Center, Dennisville Road Route 657, Cape May Courthouse, New Jersey.

The public hearing at 2:00 p.m. on February 14, 1987, will be held at the Sheraton Salisbury Inn, 300 South Salisbury Boulevard, Salisbury, Maryland.

FOR ADDITIONAL INFORMATION CONTACT: Bruce Nicholls, Surf Clam Coordinator, 617–281–3600, ext. 263.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) is implemented by regulations appearing at 50 CFR Part 652. Under § 652.23, the Secretary of Commerce will publish notice of any proposed action to reopen any area closed to surf clam fishing. The Mid-Atlantic Fishery Management Council (Council) has recommended to NOAA that each of the three areas now closed to surf clam fishing due to the presence of small surf clams (located offshore of Atlantic City, New Jersey; Ocean City, Maryland; and Chincoteague, Virginia) should be reopened as quickly as possible. A change to the regulations may be required, making the reopening criteria consistent with the prevailing surf clam minimum size. Such a change is now being considered by NOAA. The Council has also recommended (subject to the results of these public hearings and recommendations of its own Scientific and Statistical Committee) that the effort controls in the reopened areas should be no more stringent than those applying to the general surf clam fishery.

The regulations at § 652.23(c) provide that the Director, Northeast Region, NMFS, may hold a public hearing on the proposed reopening of any area closed under § 652.23 (a) or (b). The Regional Director is especially interested in the public response to the areas proposed for reopening, the schedule for reopening, and any recommendations for control of fishing effort in the reopened areas. Comments on the proposed reopening may be submitted to the Regional Director until February 28, 1987. The public hearings announced above will be held to present information about the proposals and discuss any alternatives to the areas proposed, the schedule of reopening, or the control mechanisms to be used in the areas. The Regional Director will review the results of the hearings and any comments received during the comment period. The Secretary will then publish a final notice defining the areas and specifying any restrictions on harvest within the areas.

Other Matters

This action is taken under § 652.23 and is in compliance with Executive Order 12291. The action is covered by the certification for Amendment 3 to the FMP (47 FR 4268, January 29, 1982), and under the Regulatory Flexibility Act, that the authorizing regulations do not have a significant economic impact on a substantial number of small entities.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 652

Fisheries.

Dated: February 3, 1987.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 87–2642 Filed 2–6–87; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 52, No. 26
Monday, February 9, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-67-AD]

Airworthiness Directives; Cessna Models 140A, 150 Through 150M, A150K Through A150M, 170 Through 170B, 172 Through 172H, 180 Through 180K, 182 Through 182R, 188 Through 188B, F150F Through F150M, FA150K Through FA150L, F172D Through F172K, F182(P), and F182(Q) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension of NPRM comment period.

SUMMARY: This action extends the comment period of the subject NPRM which requires modification of the airplanes by installing springs on carburetor throttle shafts to cause the throttle to open when the airplane throttle control separates from the carburetor.

DATES: Extends comment period of Docket No. 86-CE-67-AD to March 30, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Pendleton, Aerospace Engineer, Airplane Certification Office, ACE-140W, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4427.

SUPPLEMENTARY INFORMATION: The FAA issued an NPRM on December 8, 1986, applicable to Cessna Models 140A, 150 through 150M, A150K through A150M, 170 through 170B, 172 through 172H, 180 through 180K, 182 through 182R, 188 through 188B, F150F through F150M, FA150K through FA150L, F172D through F172K, F182(P), and F182(Q) airplanes, which was published in the **Federal Register** on January 6, 1987 (52 FR 435). The comment period closed January 22, 1987. This Notice would require modification of the airplanes by installing springs on carburetor throttle shafts to cause the throttle to open when the airplane throttle control separates from the carburetor.

Subsequent to the closing date for comments on this NPRM, a request was received from The Aircraft Owners and Pilots Association to extend the comment period to allow additional time to comment on the proposed rule. The FAA believes it is in the public interest to reopen and extend the comment period in order to allow any comments deemed necessary.

This document involves only an extension of a comment period for a proposed regulation. Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A regulatory evaluation has not been prepared for this action as the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR by revising the effective date of the comment period for Docket No. 86-CE-67-AD as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new date for comment:

DATES: Comments must be received on or before March 30, 1987.

Issued in Kansas City, Missouri on January 28, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-2581 Filed 2-6-87; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 9

Commission Review of Exchange Disciplinary, Access Denial and Other Adverse Action; Proposed Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") proposes to revise its regulations governing the procedures and standards for Commission review of exchange disciplinary, access denial and other adverse actions under section 8c of the Commodity Exchange Act ("Act"). These revisions are intended to streamline and clarify the procedures and standards governing the disposition of notices of appeal filed with the Commission and reflect recent developments in Federal case law.

DATE: Comments must be submitted by April 10, 1987.

ADDRESS: Comments should be sent to: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: Philip V. McGuire, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: Section 8c of the Act authorizes the Commission, in its discretion, and in accordance with such standards as it deems appropriate, to review any decision by an exchange whereby a person is suspended, expelled, otherwise disciplined or denied access. Section 8c additionally authorizes the Commission, in its discretion and upon application of any person who is adversely affected by any other action of an exchange, to review such action.

Part 9 of the Commission's regulations (17 CFR Part 9) implements section 8c. The Commission now is proposing substantial revisions to those regulations in order to streamline and clarify the procedures and standards governing Commission review of exchange disciplinary, access denial,

and "other adverse" actions. The principal proposed changes are summarized below.

In order to lend more certainty and to facilitate the appellate process, the Commission is proposing to take review of all exchange disciplinary, access denial and other adverse actions for which notices of appeal have been filed and perfected, with certain specific limited exceptions. In this connection, the Commission is also proposing a summary affirmance procedure whereby, upon finding that the result reached in the decision of the exchange is substantially correct and that none of the arguments on appeal made by the appellant raise important questions of law or policy, the Commission would summarily affirm the decision of the exchange without opinion. Any such order would constitute the Commission's final decision.

The proposed regulations also would clarify and refine the criteria employed by the Commission in determining whether to affirm, reverse or otherwise modify the decision of the exchange. As proposed, the Commission in reviewing an exchange disciplinary, access denial or other adverse action will consider whether: (1) The exchange disciplinary, access denial or other adverse action was taken in accordance with the rules of the exchange; (2) fundamental fairness was observed in the conduct of the proceeding resulting in the disciplinary, access denial or other adverse action; (3) in the case of a disciplinary action, the record contains substantial evidence of a violation of the rules of the exchange, or, in the case of an access denial or other adverse action, the record contains substantial evidence supporting the access denial or other adverse action; and (4) the disciplinary, access denial or other adverse action otherwise accords with the Act and the rules, regulations and orders of the Commission thereunder.

In addition, and in an effort to expedite the appellate process and to minimize the burden on the exchanges and on persons seeking review by the Commission, the Commission is proposing to condense the appellate process. The current rules involve several steps. First, an applicant initiates the apeal by filing a notice of appeal and, second, must perfect that appeal by filing a more detailed application for review. If the Commission grants review, the applicant must then file a brief. In response to the application for review, the exchange may file an answer. If the Commission grants review, the exchange must also file the record of the exchange proceeding and serve a copy on the applicant (provided the applicant agrees to pay the exchange reasonable fees for printing that copy). Subsequently, the exchange may file a brief in response to the applicant's brief.

In contrast, the proposed rules simplify that process. First, an appellant would initiate the appeal by filing an expanded notice of appeal (effectively combining the current notice of appeal and application for review). The exchange would then file two copies of the record of the exchange proceeding and serve one copy on the appellant (provided the appellant agrees to pay the exchange reasonable fees for printing that copy). The appellant would then perfect the appeal by filing an appeal brief. In response, the exchange would be permitted to file its answerihng brief.

I. Scope of Review

As discussed above, the proposed revisions provide that the Commission, with certain limited exceptions, will review all exchange disciplinary, access denial, and other adverse actions for which notices of appeal have been filed. The proposed rules further provide that the Commission will not accept notice of appeal for certain enumerated exchange actions (arbitrations, minor summary actions and cash market transactions) for which the Commission beieves review under Section 8c is not appropriate.

A. Generally

Section 8c of the Act authorizes the Commission, in its discretion and in accordance with such standards and procedures as it deems appropriate, to review exchange disciplinary, access denial, and other adverse actions. The Commission's current regulations implementing section 8c have required persons seeking commission review of exchange actions to demonstrate, among other things, that the issues presented in a particular application involve an important policy under the Act, that there would be some precedential benefit from a Commission decision on the issues, or that the exchange action might have been inconsistent with the rules of the exchange or not supported by substantial evidence. *See* current Rules 9.30 and 9.37. This procedure has operated such that review has been granted in only a small percentage of the cases presented to the Commission. Although this procedure is well within the discretionary authority provided by section 8c of the Act, the Commission believes it more appropriate to exercise that discretion in such a manner that the Commission, by regulation, would take review of virtually all exchange disciplinary, access denial and other adverse actions for which notices of appeals are filed and perfected.

The Commission's proposal to so exercise its direction is prompted in part by its belief that an appropriate expert forum should be available for review of exchange disciplinary, access denial and other adverse actions. A series of decisions by the Seventh Circuity interpreting section 8c and the Commission's denial of review thereunder, [1] when read in conjunction with state courts' refusal to take review of exchange disciplinary or access denial actions, [2] may effectively preclude review by a court on the merits of exchange disciplinary or access denial actions for a substantial number of exchange members and applicants for exchange membership. [3]

As noted above, the Commission has denied review and, therefore, not disturbed the decision of an exchange in a preponderance of the cases where notices of appeal have been filed with the Commission. Under the proposed revisions, however, the Commission would typically take review and, as appropriate, affirm, modify, set aside, or remand for further proceedings, in whole or in part, the decision of the exchange. The standards or review (contained in proposed § 9.33(c)) have been made more specific so that the Commission would typically affirm the decision of the exchange where the exchange action was taken in accordance with exchange

---

[1] *See Cardoza v. CFTC and Chicago Board of Trade*, 768 F.2d 1542 (7th Cir. 1985); *Korach v. Chicago Mercantile Exchange*, 747 F.2d 414 (7th Cir. 1984). *See also Rosee v. Chicago Board of Trade*, 311 F.2d 524 (7th Cir. 1963); *Shea v. Chicago Board of Trade*, No. 84 C 2105 (N.D. Ill. January 25, 1985).

[2] *E.g., Chicago Board of Trade v. Nelson*, 162 Ill. 431 (1896); *People ex rel. Rice v. Chicago Board of Trade*, 80 Ill. 134 (18750) *Shea v. Chicago Board of Trade*, No. 83 L 50765 (Ill. Cir. Ct. July 19, 1985); *Comenzo v. Mound*, No. 6440/1984, slip op. (N.Y. App. Div. June 13, 1984); *Cardoza v. Chicago Board of Trade* No. 83 L 50312 (Ill. Cir. Ct. May 29, 1983; *see Buckley v. Chicago Board Options Exchange*, 109 Ill. App. 3d 462 (1982). *See also Willette V. Coffee, Sugar and Cocoa Exchange*, 86 Civ. 4601 (S.D.N.Y. Sept. 25, 1986) (order dismissing action).

[3] The decisions of the Seventh Circuit and the Illinois State courts presumably would affect any judicial review of any disciplinary, access denial or other adverse action taken by the two largest exchanges, the Chicago Board of Trade and the Chicago Mercantile Exchange, as well as the MidAmerica Commodity Exchange and the Chicago Rice and Cotton Exchange. In addition, the decisions of the U.S. District Court for the Southern District of New York and the New York state courts similarly would affect any judicial review of any disciplinary, access denial or other adverse action taken by the Amex Commodities Corporation, the Coffee, Sugar & Cocoa Exchange, Inc., the Commodity Exchange, Inc., the New York Cotton Exchange, the New York Futures Exchange, Inc., and the New York Mercantile Exchange.

rules, the record contains substantial evidence supporting the exchange action, and the exchange action otherwise accords with the Act and the rules, regulations and orders of the Commission thereunder. The Commission further expects that these proposed standards for review, when considered in conjunction with the proposed appellate procedures described earlier, also would serve to expedite Commission consideration of appeals of exchange disciplinary, access denial and other adverse actions.

B. Exchange Actions Excluded From the Commission's Review Jurisdiction

The limited types of exchange actions, for which the Commission proposes not to accept notices of appeal (or petitions for stay) are set out in proposed § 9.1(b). As proposed, the Commission would not accept notices of appeal (or petitions for stay) of: (1) Any arbitration proceeding, regardless of whether the proceeding was conducted pursuant to the provisions of section 5a(11) of the Act or involved a controversy between members of an exchange; (2) any summary action authorized under the provisions of Commission Rule 8.27 which results in the imposition of a minor penalty for the violation of exchange rules relating to decorum or attire, or the timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities; and (3) any exchange action arising from a claim, grievance, or dispute involving cash market transactions which are not a part of, or directly connected with, any transaction for the purchase, sale, delivery or exercise of a commodity for future delivery or a commodity option.

The Commission has, as a matter of practice, traditionally declined to review exchange arbitration proceedings. Indeed, the Commission previously has articulated its belief that the legislative history of section 8c did not indicate that the term "other exchange action" was intended to encompass exchange-sponsored arbitration proceedings where the exchange was merely providing a forum for dispute resolution and had no substantial interest in the outcome of the dispute.[4] The Commission's experience, involving both the disposition of individual applications for review as well as its general oversight of the exchange's arbitration programs, to date has not indicated any need for the Commission to exercise its discretion to review exchange-sponsored arbitration proceedings. However, the Commission notes that it retains the authority to conduct oversight reviews of an exchange's conduct of arbitration proceedings in the event the exchange fails to comply with its own rules or the Commission's regulations governing arbitration proceedings and the authority to review such matters *sua sponte*. 48 FR 22136, 22141 n.37 (May 17, 1983).[5]

The Commission's proposal expressly to exclude from Commission review Rule 8.27 summary actions resulting in minor penalties is also a continuation of current Commission policy.[6] Specifically, the Commission is now proposing to make explicit that it will not accept notices of appeal (or petitions for stay) of any summary action which results in the imposition of a minor penalty for the violation of exchange rules relating to decorum or attire, or relating to the timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities. The Commission believes that it should continue to refuse to accept notices of appeal for these minor summary actions because, among other things, such appeals are not likely to raise important policy considerations, are likely to be numerous and repetitive, and otherwise would engage unnecessarily the limited resources of the Commission and the exchanges.

The Commission's proposal to exclude expressly from commission review any exchange action arising from "a claim, grievance, or dispute involving cash market transactions which are not a part of, or directly connected with, any transaction for the purchase, sale, delivery or exercise of a commodity for future delivery or a commodity option" is based on the Commission's determination that, in most instances, the Commission's regulatory interest in such matters likely would be attenuated at best, and that the Commission probably would not provide the most appropriate forum for the resolution of disputes involving any such transaction.[7] In this connection, the Commission anticipates that it would not accept a notice of appeal involving a cash market transaction unless the applicant clearly establishes that the cash market transaction is "part of, or directly connected with any transaction for the purchase, sale, delivery or exercise of a commodity for future delivery or a commodity option," and, if so, that the matter involves the type of exchange action which the Commission should review under section 8c.

Upon making a determination to decline to accept a notice of appeal (or petition for stay) pursuant to proposed § 9.1(b), the Commission promptly would notify the appellant and the exchange that it will not accept the notice of appeal (or petition for stay). The determination to decline to accept a notice of appeal under proposed § 9.1(b) merely would indicate that the matter appealed did not qualify for Commission review and would be considered by the Commission to be without prejudice to the appellant's right to seek review of the exchange action in some other forum. As a result, the aggrieved parties should remain free to challenge such exchange actions in any other available forum without being adversely affected by the Commission's refusal to accept the appeal.

II. Standards Governing Review

The proposed standards governing Commission review of an exchange action are set forth in proposed § 9.33(c). These proposed standards, which are similar to those contained in current Commisison Rules 9.37(b), are derived from three important policies of the Act: That in exercising their self-regulatory responsibilities, the exchange should take vigorous action against those who engage in activities that violate their rules; that exchange disciplinary and access denial proceedings should be conducted in a manner consistent with considerations of due process; and that the penalities or denials of access imposed by exchanges must be fair and have a reasonable basis in fact.[8]

---

[4] *See, e.g., In re Chicago Board of Trade and Robert Pitts, et al.* [CFTC July 9, 1985]; *In re Chicago Mercantile Exchange, et al. and Henry W. Stein* [CFTC December 19, 1979]; *In re Board of Trade of City of Chicago, et al. and Abdallah Tamari, et al.* [CFTC February 14, 1978]; 43 FR 59343, 59344 n.4 [December 20, 1978]. The Commission's policy of not reviewing arbitration proceedings is consistent with the courts' traditional reluctance to disturb arbitration awards where one of the parties seeks to challenge the award. Generally, judicial review of an arbitration award (which is not in the nature of an appeal, but rather in the nature of a procedure to vacate the award) is strictly limited to such matters as the fairness of the procedures, authority granted to the arbitrators, and possible bias by arbitrators. *E.G., Ballantine Books, Inc. v. Capitol Distributing Co.*, 302 F.2d 17 [2d Cir. 1962]; *see* 9 U.S.C. 1 *et seq.*

[5] *See* footnote 19 *infra* regarding proposed § 9.9(a).

[6] Current Commission Rule 9.2(a) excludes from the definition of "disciplinary action" any exchange disciplinary "penalty" which results in "the imposition of a minor sanction against a person for violation of exchange rules of decorum, attire or similar rule."

[7] Nonetheless, the Commission notes that this proposed exclusion from Commission review under Part 9 would not affect the Commission's authority under the act to otherwise regulate cash market transactions where appropriate.

[8] 43 FR 59349, 59349–59350 (December 20, 1978)

As proposed, the Commission in reviewing an exchange disciplinary, access denial or other adverse action would consider whether: (1) The exchange disciplinary, access denial or other adverse action was taken in accordance with the rules of the exchange; (2) fundamental fairness was observed in the conduct of the proceeding resulting in the disciplinary, access denial or other adverse action; (3) in the case of a disciplinary action, the record contains substantial evidence of a violation of the rules of the exchange, or, in the case of an access denial or other adverse action, the record contains substantial evidence supporting the access denial or other adverse action; and (4) the disciplinary, access denial or other adverse action otherwise accords with the Act and the rules, regulations and orders of the Commission thereunder. *Compare* Commission Rule 3.78.

Under the proposed procedures, the Commission anticipates that it may receive notices of appeal of disciplinary, access denial and other adverse actions where significant legal or factual issues outside the scope of the Act exist or predominate. In such matters, the Commission will carefully consider the existence of these non-Act issues in fashioning its final disposition, including any remedies.

As under current Commission Rule 9.37, in reviewing the exchange action the Commission could affirm, modify, set aside or remand for further proceedings, in whole or in part, the decision of the exchange. The Commission's decision would be contained in its opinion and order and would be based upon the record before it, including the record of the exchange proceeding, and any oral argument made in accordance with proposed § 9.32. Proposed § 9.31 provides that, on review, the Commission could, in its discretion, consider *sua sponte* any issues arising from the record before it and could base its determination thereon, or limit the issues to those presented in the statement of issues in the briefs, treating those issues not raised as waived.

Proposed § 9.33(b) provides for a summary affirmance procedure. As proposed, if the Commission finds that the result reached in the decision of the exchange is substantially correct and that none of the arguments on appeal made by the appellant raise important questions of law or policy, the Commission could, by appropriate order, summarily affirm the decision of the exchange without opinion.

The Commission, in its discretion, would also provide that an order of summary affirmance is not to be construed as expressing its views on the merits of a particular matter. For example, where the Commission previously has reviewed an exchange rule in accordance with the provisions of section 5a(12) of the Act and Regulation 1.41, the Commission generally would not entertain a challenge, under section 8c, to the underlying exchange rule. Instead, the Commission would be willing to consider only whether, in the circumstances of a particular case, the rule in question had been applied in a manner not inconsistent with the standards enumerated in proposed § 9.33(c).[9] In such a case, a summary affirmance of an appeal from an access denial or other adverse action involving an exchange rule which the Commission had earlier permtited to become effective under § 1.41(c) of the Commission's regulations would involve only a determination by the Commission that the appliclation of the rule in this specific context was substantially correct (and did not otherwise raise important questions of law or policy) and would not, therefore, constitute Commission approval of the underlying rule.

III. Appeals Procedure

As discussed in detail below, the proposed rules would make substantial changes to the procedures governing appeals to the Commission under section 8c of the Act. As proposed, an appeal would be initiated by the timely filing and service of a notice of appeal. The exchange would then file and serve the record of the exchange proceeding. The appellant would perfect the appeal by filing an appeal brief and, in response, the exchange then would file an answering brief. Generally, the proposed rules would neither require nor permit further submissions. For illustrative purposes, the following chart summarizes some of these proposed changes as they would apply to the Commission review of an exchange disciplinary action. All of these items are discussed in greater detail below.

Current Part 9 Rules	Proposed Part 9 Rules
1. Final exchange decision. § 8.20.	1. Final exchange decision. § 8.20.
2. Notice of exchange action to person disciplined and to Commission within 30 days. Section 8c(1)(B) of the Act; § 9.11(a).	2. Notice of exchange action to person disciplined and to Commission within 30 days. Section 8c(1)(B); § 9.11(a).
3. Effective date of final exchange action. 10 days after "9.11" notice delivered to Commission. § 9.13.	3. Effective date of final exchange action. 15 days after "9.11" notice delivered to person disciplined. § 9.12(a).
4. a. Notice of appeal filed with Commission within 10 days after "9.11" notice provided to the person disciplined. § 9.21(a).	4. a. Notice of appeal filed with Commission within 15 days after "9.11" notice delivered to person disciplined. § 9.20(a).
b. Petition for stay filed any time after filing notice of appeal. § 9.22(a).	b. Petition for stay filed within 10 days after "9.11" notice delivered to person disciplined. § 9.24(a).
Exchange response filed within 10 days after service of petition. § 9.22(b).	Exchange response filed within 5 days after service of petition. § 9.24(c).
5. Application for review filed within 30 days after "9.11" notice has been mailed. § 9.21(a).	5. Record of exchange proceeding filed within 15 days after service of notice of appeal. § 9.21(a).
6. Answer filed within 20 days after receipt of application for review. § 9.23.	6. Appeal brief filed within 30 days after service of record. § 9.22(a).
7. Commission determination to grant or deny review. § 9.31.	7. Answering brief filed within 30 days after service of appeal brief. § 9.23(a).
8. Record of exchange proceeding filed within 10 days of receipt of order granting review. § 9.34(a).	8. Commission decision. § 9.33.
9. Opening brief filed within 20 days of receipt of order granting review. § 9.35(a).	
10. Answering brief filed within 20 days of service of opening brief. § 9.35(b).	
11. Commission decision. § 9.37.	

A. Notice of Appeal; Record; Appeal Brief; Answering Brief

1. Current Procedure

Under current Commission Rule 9.21(a), an applicant must file a notice of appeal, and subsequently a more detailed application for review. The notice of appeal, which need merely state "an intention to apply to the Commission for review of the exchange action," must be filed within ten days after notice of the disciplinary (or access denial) action [10] is "provided" or within the ten days of any other adverse action; the application for review must be filed within thirty days after the notice of the disciplinary (or access denial) action or other adverse action "has been mailed." [11] The exchange may file an answer

[9] For example, some of the contract markets from time to time adopted trading incentive and membership permit programs which confer permanent floor trading privileges for certain selected contracts only upon those individuals who meet certain minimum trading requirements. Similarly, the exchange have had occasion to re-evaluate their existing membership classifications and to revise or realign the attributes of their various membership categories. The exchange in question has adopted and submitted to the Commission, in accordance with the requirements of section 5a(12) of the Act and Commission Regulation 1.41, rules implementing its proposed course of conduct.

[10] Current Commission Rule 9.2(a) defines "disciplinary action" to include "any action by an exchange that denies access to that exchange to any person."

[11] Current Commission Rule 9.21(b) provides that the application for review must include: (1) The name and residence address of the applicant; (2) the name of the exchange; (3) if known, the specific rule or rules of the exchange which resulted in the applicant's being the subject of disciplinary or other adverse action; (4) a concise statement of all facts relevant to the consideration of the application.

Continued

within twenty days after service of the application for review (current Commission Rule 9.23). The answer must set forth "facts which support the disciplinary action or other adverse action taken by the exchange," and contain "a statement expressing why, notwithstanding the claims made in the application, the disciplinary [or access denial] action or other adverse action by the exchange is in accordance with the rules of the exchange and the policies of the Act."

Current Commission Rule 9.35 does not contemplate the filing of briefs, however, until after review is granted. Thus, under the current rules, the notice of appeal, application for review and the exchange's answer may be the only documents reviewed by the commission in determining whether to grant or deny review.

2. Proposed Procedure

In contrast, the proposed rules would combine the current notice of appeal and application for review into one simplified submission and would require that the record of the exchange proceeding and the briefs be filed with the Commission prior to institution of Commission review. Thus, as proposed, the appeal would be initiated by filing a notice of appeal with the Commission within fifteen days after notice of the disciplinary, access denial or other adverse action (proposed § 9.20).

Proposed § 9.20 provides that the notice of appeal would be in the form of a brief statement indicating that the appellant is requesting Commission review of the exchange action. The notice of appeal also would include: (1) The name and address of the appellant, and any authorized agent or officer of the appellant; (2) the name and docket number of the exchange proceeding; (3) the date on which the disciplinary, access denial, or other adverse action was imposed by the exchange or the date on which the final exchange decision was rendered, and the date upon which the exchange action has or will become final and effective; (4) a copy of the notice provided to the applicant by the exchange in accordance with the provisions of proposed § 9.11, in the case of a disciplinary or access denial action, or otherwise, in the case of any other adverse exchange action; (5) the relief sought from the action of the exchange; (6) the applellant's request for receipt of a copy of the record of the exchange proceeding, and a representation that the appellant agrees to pay the exchange reasonable fees, as provided in the rules of the exchange for printing that copy; and (7) a nonrefundable filing fee of $100.

Proposed § 9.21 provides that within fifteen days after service of the notice of appeal, the exchange would file two copies of the record of the exchange proceeding, [12] and serve a copy on the appellant and any other party to the proceeding, provided that such person has agreed to pay the exchange reasonable fees, as provided in the rules of the exchange, for printing that copy. Proposed § 9.21 also provides that the exchange may file a motion to postpone the filing of the record pending a ruling on a motion requesting that the Commission decline to accept a notice of appeal of any matter that the exchange contends is excluded by proposed § 9.1(b). The filing of such a motion will operate to suspend any obligation of the exchange to file further submissions pending a ruling by the Commission on the motion.

Within thirty days after service of the record of the exchange proceeding, the appellant must perfect the appeal by filing an appeal brief. Proposed § 9.22 provides that the appeal brief must include: (1) A statement of the issues presented for review; (2) a statement of the case which must first indicate briefly the nature of the case and include a full description of the disciplinary, access denial, or other adverse action and which must also include a clear and concise statement of all facts relevant to the consideration of the application, including, if known, each alleged act or omission forming the basis of the exchange action, with appropriate references to the record of the exchange proceeding; (3) an argument which must contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, and citations to relevant authorities and to parts of the record of the exchange proceeding; and (4) a conclusion stating the precise relief sought.

As proposed, the exchange would file its answering brief within thirty days after service of the appeal brief. The answering brief generally would follow the same style as prescribed for the appeal brief but could omit a statement of the issues or of the case if the exchange does not dispute the issues or the statement of the case contained in the appeal brief. Proposed § 9.23.

The Commission proposes to expand the time for initiating the appeal from ten of fifteen days because it believes the additional time will permit an applicant a better opportunity to evaluate and, if necessary, prepare a proper course of action. Similarly, the Commission proposes to expand the time for an exchange's response from twenty to thirty days, because it believes the additional time will permit the exchange adequate time to develop a full response to the notice of appeal. Moreover, the thirty-day period for filing an answering brief is the same as the time period provided to file an appeal brief.

Requiring that briefs be filed earlier in the proceeding, as compared to the current procedure, imposes no additional burden on the parties, and indeed provides for a complete exposition of the opposing arguments. Under present practice, briefs filed by the parties in cases where the Commission has granted review tend to be largely cumulative of information and arguments that previously have been presented in the application for review and the exchange answer. The increased time frames (*i.e.*, fifteen days for initial submission of the notice of appeal, thirty days for filing the record and thirty days each for submission of appeal and answering briefs) and the omission of an additional round of submissions generally should reduce the burden on the parties.

B. Petition for Stay; Reply to Petition

Proposed § 9.24(a) provides that a party who is the subject of a disciplinary or access denial action may petition the Commission for a stay of the effectiveness of the action pending consideration by the Commission of a notice of appeal. Any such petition would have to be filed within ten days after notice of the disciplinary or access denial action has been delivered to the person and would have to be accompanied by the notice of appeal. In addition, as is the case under current Commission Rule 9.22, an exchange

including, if known, the date and place of each alleged act or commission forming the basis of the exchange's action; (5) the date on which the disciplinary or other adverse action was imposed by the exchange or the date on which the final exchange decision was rendered; (6) a full description of the disciplinary action or other adverse action imposed and the relief sought; and (7) a statement of the reasons why it is claimed that the disciplinary action or other adverse action is not in accordance with the rules of the exchange or the policies of the Act, and the specific facts which support those reasons.

[12] Proposed § 9.2(i) defines "record of the exchange proceeding" to mean all testimony, exhibits, papers and records produced at or filed in an exchange proceeding or served on a party to that proceeding; all documents, minutes or other exchange records serving as a basis for or reflecting the deliberations concerning the disciplinary action, access denial action or other adverse action taken by an exchange; a transcript or recording of any oral argument made before any body of the exchange in connection with the exchange proceeding; and a copy of all exchange rules which form the basis for the exchange action.

member who is the subject of a member responsibility action authorized by Commission Rule 8.25 could petition the Commission to stay the effectiveness of any such action pending completion of the exchange proceeding.

Proposed § 9.24(c) provides that the exchange may file its response to the petition for stay within five days after service of the petition. However, the Commission may act on the petition at any time, without waiting for the exchange response. (A stay of an exchange disciplinary or access denial action would result in the maintenance of the *status quo*. Thus, a person who is appealing the denial of an application for exchange membership would not become a member by operation of a stay. 43 FR 59343, 59348 (December 20, 1978.)

Because proposed § 9.12 would permit an exchange disciplinary or access denial action to become effective fifteen days after the written notice prescribed by proposed § 9.11 is delivered to the person disciplined or denied access, a petition for stay generally requires expedited consideration. The Commission previously had indicated that, in evaluating any petition for a stay of an exchange decision under section 8c(4) of the Act and current Rule 9.22, it would apply criteria analogous to those applied by the federal courts.[13] Proposed § 9.24(d) codifies these standards and provides that in determining whether to grant or deny a petition for stay, the Commission would consider whether the petitioner has established: (1) Petitioner's likelihood of success on the merits; (2) that denial of the stay would cause irreparable harm to the petitioner; (3) that granting the stay would not endanger orderly trading or otherwise cause substantial harm to the exchang or market participants; and (4) that granting the stay would not be contrary to the Act and the rules, regulatios and orders of the Commission.

C. Limited Participation by Interested Persons; Participation by Commission Staff

Proposed § 9.25 provides that upon the Commission's own motion or motion of any person asserting a direct and substantial interest in the outcome of the Commission proceeding, the Commission could permit limited participation in the proceeding before the Commission. Any such motion for leave to participate would have to identify the interest implicated and state the reasons why participation in the Commission proceeding would be desirable In the event the request to participate is granted, such participation would usually be limited to submission of a brief.

Proposed § 9.26 provides that the Commission's Division of Trading and Markets may file a notice of intent to participate in the proceeding as *amicus curiae* within ten days of its receipt of the exchange's answering brief. (A copy of the answering brief would be forwarded to the Division by the Proceedings Clerk.) The Division's *amicus* brief would be due within thirty days after the filing of the notice of intent to participate. Any party may file a reply within ten days after service of the Division's brief. Upon making such an *amicus* filings, no employee of the Division of Trading and Markets could make any communication relating to the proceeding, other than on the record of the proceeding before the Commission, to any Commissioner or Commission decisional employee.

D. Commission Review on Its Own Motion

Proposed § 9.31(b) implements section 8c(2) of the Act, which authorizes the Commission to review on its own motion any exchange action which suspends, expels, otherwise disciplines or denies access to a person. As would be the case with review initiated by a notice of appeal, the Commission could affirm, modify, set aside, or remand for further proceedings, in whole or in part, the exchange decision, pursuant to the standards set out in proposed § 9.33(c). Other than in extraordinary circumstances, such review would be initiated within 180 days after the Commission has received the notice of exchange action provided for in § 9.11. The Commission recognizes, however, that self-regulation is an important policy of the Act and therefore does not intend to review exchange disciplinary and access denial actions on its own motion as a common practice. *See* 43 FR 59343, 59344 (December 20, 1978).

In this connection, proposed § 9.31(a) provides that where the person disciplined or denied access has not appealed the exchange decision to the Commission, upon review of the notice specified in proposed § 9.11, the Division of Trading and Markets could request that the exchange file with the Division the record of the exchange proceeding, or designated portions of the record, a brief statement of the evidence and testimony adduced to support the exchange's findings that a rule or rules of the exchange were violated and such recordings, transcripts and other documents applicable to the particular exchange proceeding as the Division may specify. The exchange would be required to promptly advise the person who is the subject of the disciplinary or access denial action of the Division's request. The exchange would be required to file the information requested within thirty days and, upon request, to the person who is the subject of the disciplinary or access denial action. If the Commission should institute review on its own motion, it would grant the person who is the subject of the disciplinary or access denial action an opportunity to file an appropriate submission, and grant the exchange an opportunity to file a reply thereto.

E. General Provisions

Proposed § 9.1(a) sets forth the scope purpose of the rules. Proposed § 9.2 defines various terms used in the proposed rules. In addition to the definitions discussed above, proposed § 9.2(b) would define the term "disciplinary action" to mean any suspension, expulsion or other penalty (as defined in Commission Rule 8.03(i)) imposed on a member of an exchange by that exchange for violation of rules of the exchange, including summary action.[14] This proposed definition of "disciplinary action" differs from the definition of that term contained in current Commission Rule 9.2(a) in several ways.

First, unlike the current rule, the proposed definition of "disciplinary action" no longer would include "any action by an exchange which denies access to that exchange to any person." Rather, "access denial action" would be defined separately in proposed § 9.2(a) to mean "any proceeding other than a disciplinary action by an exchange that denies or limits the privileges of membership." [15]

[13] 43 FR 59343, 59348 (December 20, 1978). *See, e.g., In re Morrow*, Comm. Fut. L. Rep. (CCH) ¶23.051 (CFTC March 28, 1986); *In re Morrissey*, Comm. Fut. L. Rep. (CCH) ¶22,854 (CFTC January 2, 1986) (*citing Washington Metropolitan Area Transit Commission* v. *Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977) and *Virginia Petroleum Jobbers Association* v. *Federal Power Commission*, 259 F.2d 921 (D.C. Cir. 1958)). *See also In re Murphy*, Comm. Fut. L. Rep. (CCH) ¶22,800 (CFTC October 28, 1985).

[14] As is the Commission's current practice, warning and cautionary letters would not be considered to be disciplinary actions within the scope of these rules unless issued pursuant to a finding that a rule has been violated. *See* 43 FR 59343, 59345 n.5 (December 20, 1978).

[15] A denial of membership is an access denial action within the meaning of section 8c(1)(A) of the Act. Therefore, an exchange has the burden of insuring that there are sufficient grounds upon which to deny an application for membership, and that an applicant must be given an opportunity to

Continued

The proposed definition of "disciplinary action" would also no longer expressly exclude those summary actions which result in the imposition of a minor penalty for the violation of exchange rules relating to decorum or attire, or the timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities. As discussed above, however, proposed § 9.1(b)(2) would continue to exclude these types of summary actions from the Commission's appellate jurisdiction.[16]

"Summary action" would be defined to mean a disciplinary action resulting in the imposition of a penalty on a member of an exchange for violation of rules of the exchange authorized under the provisions of Commission Rules 8.17(b) (penalty for impeding progress of hearing), Commission Rule 8.25 (member responsibility action), or Commission Rule 8.27 (penalty for violation of rules relating to decorum, attire, submission of records or similar activities). Proposed § 9.2(j).

Proposed § 9.2(g) defines "other adverse action" and "adverse action" to include "any exchange action, other than an access denial action or disciplinary action, that adversely affects any person, whether or not a member of the exchange." The Commission expects, therefore, that the term "other adverse action" would include those exchange actions which are not governed by the disciplinary processes of the exchange and which do not involve denials of access. For example, claims by customers or other members against the proceeds resulting from the sale of exchange memberships or the denial of deliverable status to a warehouse would be "other adverse actions" which could be appealed to the Commission.

As is already the case, certain provisions of Part 9 would not apply to "other adverse actions." Specifically, proposed §§ 9.11 through 9.13 governing notice and effective date of disciplinary or access denial actions, proposed § 9.24 governing petitions for stay, and proposed § 9.31 governing Commission review on its own motion would not apply to other adverse actions.

Proposed § 9.2(c) would define the term "exchange" to mean "any board of trade which has been designated as a contract market." Proposed § 9.2(d) defines "exchange proceeding" to mean "any formal or informal proceeding which results in a disciplinary action, access denial action or other adverse action." The term "member of an exchange" would continue to be defined as "any person who is admitted to membership or has been granted membership privileges on an exchange, any employee, officer, partner, director or affiliate of such member or person with membership privileges including any associated person, and any other person under the supervision or control of such member or person with membership privileges" (proposed § 9.2(f)). The proposed definition of "rules of the exchange" parallels the provisions of Commission Rule 1.41(a)(1) and would be defined to mean "any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, or written and publicly available interpretation or stated policy of the exchange or instrument corresponding thereto" (proposed § 9.2(j)).

Proposed § 9.2(e) defines "mail" to mean "properly addressed and postpaid first class mail" and includes "overnight delivery service." Proposed § 9.2(h) defines "party" to include the person filing a notice of appeal or petition for stay who has been the subject of a disciplinary, access denial or other adverse action by an exchange; that exchange; any person participating pursuant to proposed § 9.25; and the Division of Trading and Markets when participating in a proceeding pursuant to proposed § 9.26.

Proposed § 9.3 incorporates by reference certain provisions of the Commission's Rules Relating to Reparations (17 CFR Part 12). These provisions include regulations governing business address and hours (§ 12.3); compution of time (§ 12.5); extensions of time, adjournments, and postponements (§ 12.6); *ex parte* communications (§ 12.7); and signature (§ 12.12). Commission opinions and orders interpreting these provisions in the context of reparations proceedings would be precedential.

Proposed § 9.4(a) provides that, unless otherwise specifically provided,[17] an original and two conformed copies of all documents required to be filed would be filed with the Proceedings Clerk by delivery in person or by mail. Proposed § 9.4(b) also sets out the formalities of filing and the requirements governing service. Among other things, any document required to be filed with the Proceedings Clerk must, at or before the time of filing, be served upon the other parties. Also, a party would be required to use a means of filing which is at least as expeditious as that used in serving that document upon the other parties.

One copy of all motions, petitions or applications made in the course of the proceeding, all notices of appeal, all briefs, and letters to the Commission or an employee thereof would be served by a party upon all other parties. Service could be either personal or by mail, but a party would be required to use a means of service that is at least as expeditious as that used in filing a document with the Commission. Service by mail would be complete upon deposit of the document in the mail. Where service is effected by mail, the time within which the person served may respond thereto would be increased by three days. Proposed § 9.4(c).

Proposed § 9.4(d) further provides that the Proceedings Clerk would assign a docket number upon receipt of the notice of appeal (or petition for stay) and thereupon maintain the official docket. Under current Rule 9.32, the docket number is not assigned until the Commission grants review.

Proposed § 9.5 provides that an application for a form of relief not otherwise specifically provided for in this part could be made by a written motion. The motion would state the relief sought and the basis therefor and set forth the authority relied upon. Any party coud serve and file a written response to a motion within ten days. Proposed § 9.5 also provides that the Commission could act on motions for procedural orders at any time, without awaiting a response thereto, but any party adversely affected by such Commission action could request reconsideration, vacation or modification of the action.

Proposed § 9.6 provides that if any party fails to file any document or make any appearance which is required under this part, the Commission could, upon its own motion or upon the motion of any party, dismiss the proceeding, or, based

---

rebut the reasons which were the basis for the denial. 43 FR 41950, 41962 (September 19, 1978). If an exchange determines to deny an application, section 8c(1) of the Act provides, *inter alia*, that the action must be taken in accordance with exchange rules and that the exchange must provide written notice to the Commission and the person denied access within 30 days and include the reasons for the exchange action. Current Rule 9.11 as well as proposed § 9.11 set forth the required form and manner of this notice.

[16] In order to reduce the paperwork burden on exchanges and the Commission, proposed § 9.11(a) no longer would require an exchange to notify the Commission of any summary action which results in the imposition of a minor penalty for violation of exchange rules regarding decorum or attire. The exchange still would be required to notify the sanctioned member(s) and publish the notice relating to that summary action (proposed §§ 9.11(a), 9.13). The provisions governing notice to the affected person and to the Commission are discussed in more detail below.

[17] *See, e.g.*, proposed § 9.21(a) (two copies, but no original, of record of exchange proceeding to be filed with Proceedings Clerk).

on the record before it, affirm, modify, set aside, or remand for further proceedings, in whole or in part, the decision of the exchange.

Proposed § 9.7 provides that at any time before there has been a final determination by the Commission, the parties may file a stipulation for dismissal based on a settlement agreement.[18] The Commission would issue an order which would terminate the proceeding before the Commission as to the parties to the settlement agreement. As under current Rule 9.5, the entry of such an order would not affect the Commission's authority under the Act.

In order to facilitate and expedite Commission review of exchange actions, proposed § 9.9(b)(1) would delegate to the Chief of the Opinions Section authority to issue orders which may dispose of or otherwise affect applications for review or cases on the Commission's review docket. Specifically, proposed § 9.9(b)(1) would delegate to the Chief of the Opinions Section, or the Chief's designee, the authority: (1) To waive or modify any of the requirements of proposed §§ 9.20 through 9.25 and to waive or modify the requirements of the Commission's Rules Relating to Reparations incorporated by proposed § 9.3 insofar as such requirements pertain to changes in time permitted for filing, and to the form, execution, service and filing of documents; (2) to enter orders under proposed § 9.5 (motions), § 9.6 (sanctions for noncompliance), and § 9.7 (settlement); (3) to decline to accept any notice of appeal, or petition for stay pending review, of matters specified in proposed § 9.1(b) and to so notify the appellant and the exchange; (4) to stay the effective date of a disciplinary action for a period of time, not to exceed two days, to enable the Commission to rule on a petition for stay filed under proposed § 9.24; (5) to decline to accept any document which has not been timely filed or perfected, as specified in the proposed rules; (6) to permit or deny permission to participate in a proceeding, as specified in proposed § 9.25; and (7) to enter orders which will facilitate or expedite Commission review. Proposed § 9.9(b)(2) provides that within seven days after service of a ruling issued pursuant to delegated authority, a party may file a petition for reconsideration by the Commission of the ruling. Unless the Commission orders otherwise, however, the filing of a petition for reconsideration would not operate to stay the effective date of such ruling.

Proposed § 9.9(a) provides that, to prevent undue hardship on any party or for other good cause shown, the Commission may waive any of the Part 9 rules in a particular case if it determines that no party will be prejudiced and that the end of justice will be served. *Compare* Commission rules 10.3(b), 12.4(b).[19]

Finally, under proposed § 9.32, the Commission, in its discretion, could hear oral agrument if any party requests it concurrently with the submission of its brief or if the Commission orders oral argument on its own motion.

IV. Notice of Disciplinary or Access Denial Proceeding

Current Commission Rule 9.11(a) requires exchanges to provide notice to the affected person and to the Commission of all disciplinary actions (and access denial actions) as well as other disciplinary penalties. Thus, the Commission's rules currently require an exchange to notify the Commission of minor summary sanctions for violations of exchange rules of decorum, attire or similar rules, even though these minor summary sanctions are not otherwise subject to Commission review under current Part 9.[20]

As proposed, however, the exchanges no longer would be required to notify the Commission of any summary action which results in the imposition of minor penalties, as authorized by Commission Rule 8.27, for the violation of exchange rules relating to decorum and attire (proposed § 9.11(a). In these instances, the exchanges would continue to be required to notify the person sanctioned and to provide notice to its membership (proposed §§ 9.11(c), 9.13). The Commission anticipates that this change, if adopted, would reduce substantially the exchanges' and the Commission's paperwork burdens.

This exemption from the general requirement that "9.11 notices" must be filed with the Commission would apply only to decorum and attire violations. An exchange would continue to be required to notify the Commission of any summary action which results in the imposition of minor penalties, as authorized by Commission Rule 8.27, for violation of exchange rules relating to the timely submission of records or similar activities. This distinction between the two types of summary actions reflects the Commission's judgment that evidence of the latter type of violation may be of some value in monitoring the effectiveness of the exchanges' self-regulatory enforcement programs and, more particularly, the exchanges' implementation of improved trade time recordation procedures. As discussed elsewhere in this **Federal Register** notice, however, neither of these types of summary actions would be appealable to the Commission. With the exception noted above, the notice provisions of proposed §§ 9.11 through 9.13 do not differ materially from the provisions of current Commission Rules 9.11 through 9.13.

As required by section 8c(1)(B) of the Act, the written notice must be provided to the affected person and to the Commission within thirty days after an exchange disciplinary or access denial action becomes final (proposed § 9.11(a). The written notice would include: (1) The name of the person against whom the disciplinary action or access denial action was taken; (2) a statement of the reasons for the disciplinary action or access denial action together with a listing of any rules which the person who was the subject of the disciplinary action or access denial action was charged with having violated or which otherwise serve as the basis of the exchange action; (3) a statement of the conclusions and findings made by the exchange with regard to each rule violation charged, or, in the event of settlement, a statement specifying those rule violations which the exchange has reason to believe were committed; (4) the terms of the disciplinary action or access denial action; (5) the date on which the exchange intends to make the disciplinary or access denial action effective; and (6) except as otherwise provided in proposed § 9.1(b), a statement informing the party subject to the disciplinary action or access denial action of the availability of Commission review of the exchange action pursuant to section 8c of the Act and Part 9 (proposed § 9.11(b)).

The last item (*i.e.*, proposed § 9.11(b)(6)) is not currently required to be included in a "9.11 notice." In light of the fifteen-day period permitted for initiating an appeal, the Commission proposes to require that the notice state the availability of Commission review pursunt to Section 8c to ensure that persons aggrieved by exchange actions will be informed adquately of their legal

[18] *Cf.* Fed. R. App. P. 42.

[19] Pursuant to this provision and notwithstanding proposed § 9.1(b), the Commission could, for example, determine to hear an appeal from an exchange arbitration proceeding where fraud or egregious prejudice is indicated. However, nothing herein is intended to limit access to any other forum for purposes of raising any matter referred to in proposed § 9.1(b).

[20] 43 FR 59343, 59346 (December 20, 1978).

rights and be able to act on them in a timely manner.

Proposed § 9.12(a) generally provides that an exchange disciplinary or access denial action may not become effective until at least fifteen days after the notice is delivered to the person disciplined or denied access. This fifteen-day period, which conforms to the fifteen-day deadline for the filing of a notice of appeal, would permit the person disciplined or denied access adequate time to apply to the Commission for a stay of the disciplinary or access denial action in appropriate cases.

In this connection, the Commission is well aware that certain situations may arise in which the integrity of the exchange's disciplinary program or the contracts trade on the exchange may be threatened and that the exchange must take prompt action. Therefore, proposed § 9.12(a) provides that an exchange may cause a disciplinary action to become effective before the expiration of the fifteen-day period if the exchange determines and states that (1) immediate action is necessary to protect the best interests of the marketplace (*see* Commission Rule 8.25) or (2) the actions of a person who is within the exchange's jurisdiction have impeded the progress of a disciplinary hearing (*see* Commission Rule 8.17(b)).

In addition, and consistent with current practice, an exchange may cause a disciplinary action to become effective immediately where a person has violated exchange rules relating to decorum or attire, or timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities (*see* Commission Rule 8.27). Finally, an exchange may cause a disciplinary or access denial action to become effective in less than fifteen days if the person who is the subject of the disciplinary or access denial action has consented to the penalty and the timing of its effectiveness.

Proposed § 9.13 would continue the provisions of current Commission Rule 9.12, which require that whenever an exchange suspends, expels or otherwise disciplines, or denies any person access to the exchange, it must make public its findings by disclosing at least the information contained in the notice required by proposed § 9.11. The exchange must make such findings public as soon as the disciplinary action or access denial action becomes effective in accordance with the provisions of proposed § 9.12 by posting a notice in a conspicuous place on its premises to which its members and the public regularly have access for a period of five consecutive business days. Thereafter, the exchange must maintain and make available for public inspection a record of the information contained in the disciplinary or access denial notice.

V. Miscellaneous Provisions

Proposed § 9.1(c) provides that, unless otherwise ordered, the amendments being proposed by the Commission would apply in their entirety to all appeals, and all matters relating thereto, filed on and after the effective date of the revised Part 9. Proposed § 9.1(c) also provides, however, that parties to any Part 9 proceeding pending on the effective date could, within thirty days of the effective date, elect to have the matter governed by the provisions of the revised Part 9. The Commission invites public comment on this aspect of its proposal and reiterates its interest in receiving additional comments on suggested changes in the Part 9 rules that would help streamline the procedures and clarify the standards governing appeal and review.

VI. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with that Act, the Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget.

Persons wishing to comment on the information collection requirements should contact Robert Neal, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503. Telephone: (202) 395–7340. Copies of the information collection submission to OMB are available from Joseph G. Salazar, Clearance Officer, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–9735.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. With respect to persons seeking Commission review, the proposed regulation would impose no additional regulatory burden since Commission review of exchange disciplinary, access denial, and other adverse actions is already provided for by the provisions of current Part 9 of the Commission's rules. Indeed, the proposed revisions would ease the regulatory burden by reducing the number of submissions and by providing greater certainty to the standards and procedures governing such review. Finally, appeal to the Commission pursuant to this part is elective and one of several forums in many instances. The Commission previously has determined that contract markets are not "small entities" within the RFA and, accordingly, the requirements of the RFA do not apply to those entities. 47 FR 18618 (April 30, 1982). Accordingly, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman of the Commission hereby certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 9

Administrative practice and procedure, Commodity exchanges, Commodity futures.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a), 4c, 5a, 8a, and 8c thereof, 7 U.S.C. 4a, 6c, 7a, 12a and 12c, and the authority contained in section 26(c) of the Futures Trading Act of 1978, 7 U.S.C. 16a, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

17 CFR Part 9 is proposed to be revised to read as follows:

PART 9—RULES RELATING TO REVIEW OF EXCHANGE DISCIPLINARY, ACCESS DENIAL OR OTHER ADVERSE ACTIONS

Subpart A—General Provisions

Sec.

Subpart B—Notice and Effective Date of Disciplinary Action or Access Denial Action

Subpart C—Initial Procedure With Respect to Appeals

Authority: 7 U.S.C. 4a, 6c, 7a, 12a, 12c, 16a.

Subpart A—General Provisions

§ 9.1 Scope of rules.

(a) *Matters included.* This part governs the review by the Commission, pursuant to section 8c of the Act, as amended, of any suspension, expulsion, disciplinary or access denial action, or other adverse action by an exchange.

(b) *Matters excluded.* This part does not apply to and the Commission will not accept notices of appeal, or petitions for stay pending review, of:

(1) Any arbitration proceeding, regardless of whether the proceeding was conducted pursuant to the provisions of section 5a(11) of the Act or involved a controversy between members of an exchange;

(2) Except as provided in §§ 9.11(a), 9.11(b) (1) through (5), 9.11(c), 9.12(a) and 9.13 (concerning the notice, effective date and publication of a disciplinary or access denial action), any summary action authorized under the provisions of § 8.27 of this chapter imposing a minor penalty for the violation of exchange rules relating to decorum or attire, or relating to the timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities; and

(3) Any exchange action arising from a claim, grievance, or dispute involving cash market transactions which are not a part of, or directly connected with, any transaction for the purchase, sale, delivery or exercise of a commodity for future delivery or a commomdity option.

The Commission will, upon its own motion or upon motion filed pursuant to § 9.21(b), promptly notify the appellant and the exchange that it will not accept the notice of appeal of petition for stay of matters specified in this paragraph. The determination to decline to accept a notice of appeal will be without prejudice to the appellant's right to seek alternate forms of relief that may be available in any other forum.

(c) *Applicability of these Part 9 Rules.* Unless otherwise ordered, these rules will apply in their entirety to all appeals, and matters relating thereto filed on or after [effective date]. Any Part 9 proceeding pending before the Commission on [effective date] will continue to be governed by the Commission's former Part 9 Rules, 17 CFR Part 9 (1986), except that the parties to any proceeding pending on [effective date] may, within 30 days of [effective date], by written stipulation executed by all parties, and filed with the Proceeding Clerk before the Commission's final decision is rendered, elect to have the matter governed by the provisions of this Part 9, as amended.

§ 9.2 Definitions.

For purposes of this part:

(a) "Access denial action" means any proceeding other than a disciplinary action by an exchange that denies or limits the privileges of membership.

(b) "Discipliniary action" means any suspension, expulsion or other penalty (as defined in § 8.03(i) of this chapter) imposed on a member of an exchange by that exchange for violation of rules of the exchange, including summary actions.

(c) "Exchange" means any board of trade which has been designated as a contract market.

(d) "Exchange proceeding" means any formal or informal proceeding by an exchange which results in a disciplinary action, access denial action or other adverse action.

(e) "Mail" means properly addresssed and postpaid first class mail, and includes overnight delivery service.

(f) "Member of an exchange" means any person who is admitted to membership or has been granted membership privileges on an exchange, any employee, officer, partner, director or affiliate of such member or person with membership privileges including any associated person, and any other person under the supervision or control of such member or person with membership privileges.

(g) "Other adverse action" and "adverse action" include any exchange action, other than an access denial action or disciplinary action, that adversely affects any person, whether or not a member of the exchange.

(h) "Party" includes the person filing a notice of appeal or petition for stay who has been the subject of a disciplinary, access denial or other adverse action by an exchange; that exchange; any person participating in a proceeding under this part pursuant to § 9.25; and the Division of Trading and Markets when participating in a proceeding under this part pursuant to § 9.26.

(i) "Record of the exchange proceeding" means all testimony, exhibits, papers and records produced at or filed in an exchange proceeding or served on a party to that proceeding; all documents, minutes or other exchange records serving as a basis for or reflecting the deliberations concerning the disciplinary action, access denial action or other adverse action taken by an exchange; a transcript or recording of any proceeding before any body of the exchange in connection with the exchange proceeding; and a copy of all exchange rules which form the basis for the exchange proceeding.

(j) "Rules of the exchange" means any constitutional provision, article of incorporation, by law, rule, regulation, resolution, or written and publicly available interpretation or stated policy of the exchange, or instrument corresponding thereto.

(k) "Summary action" means a disciplinary action resulting in the imposition of a penalty on a member of an exchange for violation of rules of the exchange authorized under the provisions of § 8.17(b) (penalty for impeding progress of hearing), § 8.25 (member responsibility action), or § 8.27 (penalty for violation of rules relating to decorum, attire, submission of records or similar activities) of this chapter.

§ 9.3 Applicable provisions of 17 CFR Part 12.

Except as otherwise provided in this part, the following provisions of the Commission's Rules Relating to Reparations contained in Part 12 of this chapter apply to this part: § 12.3 (Business Address; Hours); § 12.5 (Computation of Time); § 12.6 (Extension of Time; Adjournments; Postponements); § 12.7 (Ex Parte Communications); and § 12.12 (Signature).

§ 9.4 Filing and service; official docket.

(a) *Filing with the Proceedings Clerk; proof of filing; proof of service.* Any document that is required by this part to be filed with the Proceedings Clerk must be filed by delivering it in person or by mail to: Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. To be timely filed under this part, a document must be delivered or mailed to the Proceedings Clerk within the time prescribed for filing. A party must use a means of filing which is at least as expeditious as that used in serving that document upon the other parties. Proof of filing must be made by attaching to the document for filing an affidavit of filing executed by any person 18 years of age or older or a proof of filing executed by an attorney-at-law qualified

to practice before the Commission. The proof of filing must certify that the attached document was deposited in the mail, with first-class postage prepaid, addressed to the Proceedings Clerk, Office of Proceedings, 2033 K Street, NW., Washington, DC 20581, on the date specified in the affidavit. Proof of service of a document must be made by filing with the Proceedings Clerk, simultaneously with the filing of the required document, an affidavit of service executed by any person 18 years of age or older or a certification of service executed by an attorney-at-law qualified to practice before the Commission. The proof of service must identify the persons served, state that service has been made, set forth the date of service, and recite the manner of service.

(b) *Formalities of filing.*—(1) *Number of copies.* Unless otherwise specifically provided, an original and two conformed copies of all documents filed with the Commission in accordance with the provisions of this part must be filed with the Proceedings Clerk.

(2) *Title page.* All documents filed with the Proceedings Clerk must include at the head thereof, or on a title page, the name of the Commission, the title of the proceeding, the docket number (if one has been assigned by the Proceedings Clerk), the subject of the particular document and the name of the person on whose behalf the document is being filed.

(3) *Paper, spacing, type.* All documents filed with the Proceedings Clerk must be typewritten, must be on one grade of good white paper no less than 8 or more than 8½ inches wide and no less than 10½ or more than 11½ inches long, and must be bound on the top only. They must be double-spaced, except for long quotations (3 or more lines) and footnotes which should be single-spaced.

(4) *Signature.* The original copy of all papers must be signed in ink by the person filing the same or by his duly authorized agent or attorney.

(c) *Service.*—(1) *General requirements.* All documents filed with the Proceedings Clerk must, at or before the time of filing, be served upon all parties. A party must use a means of service which is at least as expeditious as that used in filing that document with the Proceedings Clerk. One copy of all motions, petitions or applications made in the course of the proceeding, all notices of appeal, all briefs, and letters to the Commission or an employee thereof must be served by a party upon all other parties.

(2) *Manner of service.* Service may be either personal or by mail. Service by mail is complete upon deposit of the document in the mail. Where service is effected by mail, the time within which the person served may respond thereto will be increased by three days.

(3) *Designation of person to receive service.* The first document filed in a proceeding by or on behalf of any party must state on the first page the name and postal address of the person who is authorized to receive service for the party of all documents filed in the proceeding. Thereafter, service of documents must be made upon the person authorized unless service on a different authorized person or on the party himself is ordered by the Commission, or unless pursuant to § 9.8 the person authorized is changed by the party upon due notice to all other parties. Parties must file and serve notification of any changes in the information provided pursuant to this subparagraph as soon as practicable after the change occurs.

(4) *Service of orders and decisions.* A copy of all notices, rulings, opinions and orders of the Commission will be served on each of the parties and will be deemed served upon deposit in the mail.

(d) *Official docket.* Upon receipt of a notice of appeal filed in accordance with § 9.20, or a petition for stay pending review filed in accordance with § 9.24, the Proceedings Clerk will establish and thereafter maintain the official docket of that proceeding and will assign a docket number to the proceeding.

§ 9.5 Motions.

(a) *In general.* An application for a form of relief not otherwise specifically provided for in this part must be made by a written motion, filed with the Proceedings Clerk. The motion must state the relief sought and the basis for the relief and may set forth the authority relied upon.

(b) *Answer to motions.* Any party may serve and file a written response to a motion within ten days after service of the motion, or within such longer or shorter period as established by these rules, or as the Commission may direct.

(c) *Motions for procedural orders.* Motions for procedural orders, including motions for extensions of time, may be acted on at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation or modification of the action.

(d) *Dilatory motions.* Frivolous or repetitive motions dealing with the same subject matter will not be permitted and such motions will be summarily denied.

§ 9.6 Sanctions for noncompliance.

In the event that any party fails to file any document or make any appearance which is required under this part, the Commission may, in its discretion, and upon its own motion or upon the motion of any party to the proceeding, dismiss the proceeding before it, or, based on the record before it, affirm, modify, set aside, or remand for further proceedings, in whole or in part, the decision of the exchange.

§ 9.7 Settlement.

At any time before there has been a final determination by the Commission with respect to any notice of appeal filed in accordance with § 9.20, the parties may file a stipulation for dismissal based on a settlement agreement. The Commission will issue an order which will terminate the proceeding before the Commission as to the parties to the settlement agreement. The entry of such an order does not affect the Commission's authority under the Act.

§ 9.8 Practice before the Commission.

(a) *Practice.*—(1) *By non-attorneys.* An individual may appear *pro se* (on his own behalf); a general partner may represent the partnership; a *bona fide* officer of a corporation, trust or association may represent the corporation, trust or association.

(2) *By attorneys.* An attorney-at-law who is admitted to practice before the highest Court in any State or territory, or of the District of Columbia, who has not been suspended or disbarred from appearance and practice before the Commission in accordance with provisions of Part 14 of this chapter may represent parties as an attorney in proceedings before the Commission.

(b) *Debarment of counsel or representative during the course of a proceeding.* Whenever, while a proceeding is pending before the Commission, the Commission finds that a person acting as counsel or representative for any party to the proceeding is guilty of contemptuous conduct, the Commission may order that such person be precluded from further acting as counsel or representative in the proceeding. The proceeding will not be delayed or suspended pending disposition of the appeal; *Provided,* That the Commission may suspend the proceedings for a reasonable time for the purpose of enabling the party to obtain other counsel or representative.

(c) *Withdrawal or representation.* Withdrawal from representation of a party will be only by leave of the Commission. Such leave to withdraw

may be conditioned on the attorney's (or representative's) submission of an affidavit averring that the party represented has actual knowledge of the withdrawal, and such affidavit must include the name and address of a successor counsel (or representative) or a statement that the represented party has determined to proceed *pro se*, in which case, the statement must include the address where the party can thereafter be served.

§ 9.9 Waiver of rules; delegation of authority.

(a) *Standards for waiver; notice to parties.* To prevent undue hardship on any party or for other good cause shown the Commission may waive any rule in this part in a particular case and may order proceedings in accordance with its direction upon a determination that no party will be prejudiced thereby and that the ends of justice will be served. Reasonable notice will be given to all parties of any action taken pursuant to this paragraph.

(b) *Delegation of authority.* (1) The Commission hereby delegates, until the Commission orders otherwise, to the Chief of the Opinions Section, or the Chief's designee, the authority:

(i) To waive or modify any of the requirements of §§ 9.20–9.25 and to waive or modify the requirements of the Commission's Rules Relating to Reparations incorporated by § 9.3 insofar as such requirements pertain to changes in time permitted for filing, and to the form, execution, service and filing of documents;

(ii) To enter orders under §§ 9.5, 9.6 and 9.7;

(iii) To decline to accept any notice of appeal, or petition for stay pending review, of matters specified in § 9.1(b) and to so notify the appellant and the exchange;

(iv) To stay the effective date of a disciplinary action for a period of time, not to exceed two days, to enable the Commission to rule on a petition for stay filed under § 9.24;

(v) To decline to accept any document which has not been timely filed or perfected, as specified in these rules;

(vi) To permit or deny permission to participate in a proceeding as specified in § 9.25; and

(vii) To enter any order which will facilitate or expedite Commission review.

(2) Within seven days after service of a ruling issued pursuant to paragraph (b)(1) of this section, a party may file with the Proceeding Clerk a petition for Commission reconsideration of the ruling. Unless the Commission orders otherwise, the filing of a petition for reconsideration will not operate to stay the effective date of such ruling.

(3) The Chief of the Opinions Section may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (b)(1) of this section.

(4) Nothing in this section will be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the Chief of the Opinions Section under this section.

Subpart B—Notice and Effective Date of Disciplinary Action or Access Denial Action

§ 9.10 [Reserved]

§ 9.11 Form, contents and delivery of notice of disciplinary or access denial action.

(a) *When required.* Whenever an exchange decision pursuant to which a disciplinary action or access denial action is to be imposed has become final, the exchange must, within thirty days thereafter, provide written notice of such action to the person against whom the action was taken and to the Commission: *Provided,* That the exchange is not required to notify the Commission of any summary action, as authorized under the provisions of § 8.27 of this chapter, which results in the imposition of minor penalties for the violation of exchange rules relating to decorum or attire. No final disciplinary or access denial action may be made effective by the exchange except as provided in § 9.12.

(b) *Contents of notice.* For purposes of this part, the written notice of a disciplinary action or access denial action may be either a copy of a written decision which accords with §§ 8.16, 8.18, or 8.19(c) of this chapter (including copies of any materials incorporated by reference) or other written notice which must include:

(1) The name of the person against whom the disciplinary action or access denial action was taken;

(2) A statement of the reasons for the disciplinary action or access denial action together with a listing of any rules which the person who was the subject of the disciplinary action or access denial action was charged with having violated or which otherwise serve as the basis of the exchange action;

(3) A statement of the conclusions and findings made by the exchange with regard to each rule violation charged or, in the event of settlement, a statement specifying those rule violations which the exchange has reason to believe were committed;

(4) The terms of the disciplinary action or access denial action;

(5) The date on which the action was taken and the date of the exchange intends to make the disciplinary or access denial action effective; and

(6) Except as otherwise provided in § 9.1(b), a statement informing the party subject to the disciplinary action or access denial action of the availability of Commission review of the exchange action pursuant to section 8c of the Act and this part.

(c) *Delivery and filing of the notice.* Delivery of the notice must be made either personally to the person who was the subject of the disciplinary action of access denial action or by mail to such person at the person's last known address. A copy of the notice must be filed on the same date with the Commission, either in person during normal business hours or by mail to: Contract Markets Section, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K St., NW., Washington, DC 20581. The notice filed with the Commission must additionally include the date on which the notice was delivered to the person disciplined or denied access and state whether delivery was personal or by mail.

(d) *Effect of delivery and filing by mail.* Filing by mail to the Commission and the delivery by mail to the person disciplined or denied access will be complete upon deposit in the mail of a properly addressed and postpaid document. Where delivery to the person disciplined or denied access is effected by such mail, the time within which a notice of appeal or petition for stay may be filed will be increased by three days.

(e) *Certification.* Copies of the notice and the submission of any additional information provided pursuant to this section must be certified as true and correct by a duly authorized officer, agent or employee of the exchange.

§ 9.12 Effective date of disciplinary or access denial action.

(a) *Effective date.* Any disciplinary or access denial action taken by an exchange will not become effective until at least fifteen days after the written notice prescribed by § 9.11 is delivered to the person disciplined or denied access: *Provided, however,* That the exchange may cause a disciplinary action to become effective prior to that time if:

(1) As authorized by § 8.25 of this chapter, the exchange reasonably believes, and so states in its written decision, that immediate action is

necessary to protect the best interests of the marketplace; or

(2) As authorized by § 8.17(b) of this chapter, the exchange determines, and so states in its written decision, that the actions of a person who is within the exchange's jurisdiction have impeded the progress of a disciplinary hearing; or

(3) As authorized by § 8.27 of this chapter, the exchange determines that a person has violated exchange rules relating to decorum or attire, or timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities; or

(4) The person against whom the action is taken has consented to the penalty to be imposed and to the timing of its effectiveness.

(b) *Notice of early effective date.* If the exchange determines in accordance with paragraph (a)(1) of this section that a disciplinary action will become effective prior to the expiration of fifteen days after written notice thereof, it must notify the person disciplined in writing, either personally or by telegram or other means of written telecommunication to the person's last known address, stating the reasons for the determination. The exchange must also by telegram or other means of written telecommunication immediately notify the Commission (Attention: Contracts Markets Section, Division of Trading and Markets). Where notice is delivered telegram or other means of written telecommunication, the time within which the person so notified may file a petition for stay pursuant to § 9.24(a)(2) will be increased by one day.

§ 9.13 Publication of notice.

Whenever an exchange suspends, expels of otherwise disciplines, or denies any person access to the exchange, it must make public its findings by disclosing at least the information contained in the notice required by § 9.11(b). An exchange must make such findings public as soon as the disciplinary action or access denial action becomes effective in accordance with the provisions of § 9.12 by posting a notice in a conspicuous place on its premises to which its members and the public regularly have access for a period of five consecutive business days. Thereafter, the exchange must maintain and make available for public inspection a record of the information contained in the disciplinary or access denial notice.

§§ 9.14–9.19 [Reserved]

Subpart C—Initial Procedure With Respect to Appeals

§ 9.20 Notice of appeal.

(a) *Time of file.* Except as provided in § 9.1(b), any person who is the subject of disciplinary or access denial action by an exchange or any person who is otherwise adversely affected by any other action of an exchange may, at any time within fifteen days after notice of the disciplinary or access denial action has been delivered to the person disciplined or denied access in accordance with § 9.11, or within fifteen days after notice of an other adverse action, file a a notice of appeal of such disciplinary, access denial or other adverse action. The Commission may dismiss any notice of appeal that is not timely filed.

(b) *Contents.* The notice of appeal need consist only of a brief statement indicating that the party is requesting Commission review of the exchange action, and must include:

(1) The name and address of the appellant, and any duly authorized agent or officer of the appellant;

(2) The name and docket number of the exchange proceeding;

(3) The date on which the disciplinary, access denial or other adverse action was imposed by the exchange or the date on which the final exchange decision was rendered, and the dates upon which the exchange action has or will become final and effective;

(4) A copy of the notice provided to the appellant by the exchange in accordance with the provisions of § 9.11, in the case of a disciplinary or access denial action, or otherwise, in the case of any other adverse exchange action;

(5) The relief sought from the action of the exchange;

(6) The appellant's request for a copy of the record of the exchange proceeding, and a representation that the appellant agrees to pay to the exchange reasonable fees, as provided in the rules of the exchange, for printing that copy; and

(7) A nonrefundable filing fee of $100 remitted by check, bank draft or money order, payable to the Commodity Futures Trading Commission.

§ 9.21 Record of exchange proceeding.

(a) *Filing of record.* Within fifteen days after service of the notice of appeal, the exchange must file two copies of the record of the exchange proceeding (as defined in § 9.2(i)) with the Proceedings Clerk, and serve a copy of the appellant and any other party to the proceeding, provided that such person has agreed to pay the exchange reasonable fees, as provided in the rules of the exchange, for printing the copy. The record must be bound as a unit, must be chronologically indexed and tabbed, must be certified as correct by a duly authorized official, agent or employee of the exchange, and must contain a certificate of service on the appellant or any other party to the proceeding (or waiver of service for failure to pay costs pursuant to this rule).

(b) *Motion to postpone the filing of the record.* Within fifteen days after service of the notice of appeal, the exchange may file a motion to postpone the filing of the record pending a ruling on a motion that the Commission not accept a notice of appeal of any matter that the exchange contends is excluded by § 9.1(b).

§ 9.22 Appeal brief.

(a) *Time to file.* Any person who has filed a notice of appeal in accordance with the provisions of § 9.20 must perfect the appeal by filing an appeal brief with the Proceedings Clerk within thirty days after service of the record of the exchange proceeding. The Commission may dismiss any appeal for which an appeal brief is not timely filed.

(b) *Contents.* Each appeal brief submitted to the Commission pursuant to this section must include, in the order indicated:

(1) A statement of the issues presented for review;

(2) A statement of the case. The statement must first indicated briefly the nature of the case and include a full description of the disciplinary, access denial or other adverse action. There must follow a clear and concise statement of all facts relevant to the consideration of the appeal including, if known, each alleged act or omission forming the basis of the exchange action, with appropriate references to the record of the exchange proceeding;

(3) An argument. The argument may be preceded by a summary. The argument must contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, and citations to relevant authorities and to parts of the record of the exchange proceeding; and

(4) A conclusion stating the precise relief sought.

(c) *Length of appeal brief.* Without prior leave of the Commission, the apppeal brief may not exceed thirty-five pages, exclusive of any table of contents, table of cases, index and appendix containing transcripts of

testimony, exhibits, statutes, rules, regulations or similar materials.

§ 9.23 Answering brief.

(a) *Time for filing answering brief.* Within thirty days after service of the appeal brief, the exchange must file with the Commission an answering brief.

(b) *Contents of answering brief.* The answering brief generally must follow the same style as prescribed for the appeal brief but may omit a statement of the issues or of the case if the exchange does not dispute the issues or the statement of the case contained in the appeal brief.

(c) *Length of answering brief.* Without prior leave of the Commission, the answering brief may not exceed thirty-five pages, exclusive of any table of contents, table of cases, index and appendix containing transcripts of testimony, exhibits, statutes, rules, regulations or similar materials.

§ 9.24 Petition of stay pending review.

(a) *Time to file.* (1) Within ten days after the notice of the disciplinary or access denial action has been delivered in accordance with § 9.11 to a person disciplined or denied access, that person may petition the Commission to stay the disciplinary or access denial action pending consideration by the Commission of the notice of appeal and, if granted, the appeal underlying the notice of appeal. The petition for stay must be accompanied by the notice of appeal.

(2) Within ten days after a notice of summary action has been delivered in accordance with § 9.12(b) to a person who is the subject of a summary action authorized by § 8.25 of this chapter, that person may petition the Commission to stay the effectiveness of the summary action pending completion of the exchange proceeding conducted as authorized by § 8.26 of this chapter.

(3) The Commission may deny any petition for stay which is not timely filed or which is not otherwise in accord with these rules.

(b) *Contents of petition for stay.* A petition filed under this section must state the reasons that the stay is requested and the facts relied upon, as specified in § 9.20. Averments of the petition must be supported by affidavits, other sworn statements or copies thereof, or a stipulation as to those facts which are not in dispute. Based upon the petition, the Commission, in its discretion, may order a stay of the disciplinary action or access denial action.

(c) *Response to petition.* The exchange may serve and file a written response to any petition for a stay within five days after service of the petition.

(d) *Standards for granting petition for stay.* The Commission will promptly determine whether to grant or deny a petition for stay and may act upon a petition at any time, without waiting for a response thereto. In determining whether to grant or deny the petition for stay, the Commission will consider, among other things, whether the petitioner has established:

(1) Petitioner's likelihood of success on the merits; and

(2) The denial of the stay would cause irreparable harm to the petitioner; and

(3) That granting the stay would not endanger orderly trading or otherwise cause substantial harm to the exchange or market participants; and

(4) That granting the stay would not be contrary to the Act, and the rules, regulations and orders of the Commission thereunder.

§ 9.25 Limited participation of interested persons.

On its own motion or upon motion of any person asserting a direct and substantial interest in the outcome of a proceeding conducted under this part, the Commission, in its discretion, may permit the limited participation by such interested person in the proceeding. A motion for leave to participate in the proceeding must be filed promptly, must identify the interest of that person and must state the reasons why participation in the proceeding by that person is desirable, and must state whether that person requests a copy of the record of the exchange proceeding to the extent permitted by section 8c(1) (B) of the Act and that such person agrees to pay the exchange reasonable fees, as provided in the rules of the exchange, for printing the copy.

§ 9.26 Participation of Commission staff.

Within ten days after the receipt by the Division of Trading and Markets of the answering brief, the Division of Trading and Marketing may file with the Proceedings Clerk a notice of intention to participate in the proceedings as *amicus curiae.* Within thirty days after filing the notice of intention to participate, the Division may file a brief as *amicus curiae.* Without prior leave of the Commission, the brief may not exceed thirty-five pages. The brief must be filed and served on the appellant, exchange and any other parties to the proceeding in the manner specified by these rules. Within ten days after service of the Division's brief, any party may file a reply to the Division's brief. After the filing of the notice of intent to participate, no employee of the Division of Trading and Markets may thereafter make any communication relating to the proceeding, other than on the record of the proceeding before the Commission, to any Commissioner or Commission decisional employee.

§§ 9.27–29 [Reserved]

Subpart D—Commission Review of Disciplinary, Access Denial or Other Adverse Action

§ 9.30 Scope of review.

On review, the Commission may, in its discretion, consider *sua sponte* any issues arising from the record before it and may base its determination thereon, or limit the issues to those presented in the statement of issues in the briefs, treating those issues not raised as waived.

§ 9.31 Commission review of disciplinary or access denial action on its own motion.

(a) *Request for additional information.* Where a person disciplined or denied access has not appealed the exchange decision to the Commission, upon review of the notice specified in § 9.11, the Division of Trading and Markets may request that the exchange file with the Division the record of the exchange proceeding, or designated portions of the record, a brief statement of the evidence and testimony adduced to support the exchange's findings that a rule or rules of the exchange were violated and such recordings, transcripts and other documents applicable to the particular exchange proceeding as the Division may specify. The exchange must promptly advise the person who is the subject of the disciplinary or access denial action of the Division's request. Within thirty days after service of the Division's request, the exchange must file the information requested with the Division and, upon request, deliver that information to the person who is the subject of the disciplinary or access denial action. Delivery and filing must be in the manner prescribed by §9.11(c). A person subject to the disciplinary action or access denial action requesting a copy of the information furnished to the Division must, if the exchange rules so provide, agree to pay the exchange reasonable fees for printing the copy.

(b) *Review on motion of the Commission.* The Commission may institute review of an exchange disciplinary or access denial action on its own motion. Other than in extraordinary circumstances, such review will be initiated within 180 days after the Commission has received the notice of exchange action provided for in § 9.11. If the Commission should

institute review on its own motion, it will issue an order permitting the person who is the subject of the disciplinary or access denial action an opportunity to file an appropriate submission, and the exchange of an opportunity to file a reply thereto.

§ 9.32 Oral argument.

(a) *On motion of Commission.* On its own motion, the Commission may, in its discretion, hear oral argument by the parties any time before the decision of the Commission is filed with the Proceedings Clerk.

(b) *On request of party.* Any party may file with the Proceedings Clerk a request in writing for the opportunity to present oral argument before the Commission, which the Commission may, in its discretion, grant or deny. A request under this paragraph must be filed concurrently with the party's brief.

(c) *Reporting and transcription.* Oral argument before the Commission will be recorded and transcribed unless the Commission directs otherwise. In the event the Commission affords the parties the opportunity to present oral argument before the Commission, the oral argument will proceed in accordance with the provisions of § 10.103(b) of this chapter.

§ 9.33 Final decision by the Commission.

(a) *Opinion and order.* Upon review, the Commission may affirm, modify, set aside, or remand for further proceedings, in whole or in part, the decision of the exchange. The Commission's decision will be contained in its opinion and order which will be based upon the record before it, including the record of the exchange proceeding, and any oral argument made in accordance with § 9.32. Except as provided in paragraph (b) of this section, the opinion and order will constitute the final decision of the Commission, effective upon service on the parties. In the event the Commission is equally divided as to its decision, the Commission will affirm without opinion the decision of the exchange, which will constitute the Commission's final decision.

(b) *Order of summary affirmance.* If the Commission finds that the result reached in the decision of the exchange is substantially correct and that none of the arguments on appeal made by the appellant raise important questions of law or policy, the Commission may, by appropriate order, summarily affirm the decision of the exchange without opinion, which will constitute the Commission's final decision. The Commission, in its discretion, may provide that an order of summary affirmance is not to be construed as expressing its views on the merits of a particular matter.

(c) *Standards of review.* In reviewing an exchange disciplinary, access denial or other adverse action, the Commission will consider whether:

(1) The exchange disciplinary, access denial or other adverse action was taken in accordance with the rules of the exchange;

(2) Fundamental fairness was observed in the conduct of the proceeding resulting in the disciplinary, access denial or other adverse action;

(3)(i) In the case of a disciplinary action, the record contains substantial evidence of a violation of the rules of the exchange, or (ii) in the case of an access denial or other adverse action, the record contains substantial evidence supporting the exchange action; and

(4) The disciplinary, access denial or other adverse action otherwise accords with the Act and the rules, regulations and orders of the Commission thereunder.

Issued in Washington, D.C. on February 3, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-2503 Filed 2-6-87; 8:45 am]

BILLING CODE 6351-01-M

Federal Energy Regulatory Commission

18 CFR Ch. 1

Basket Termination; Order Granting Rehearing for Purposes of Further Consideration

Issued February 4, 1987.

[Docket Nos. RM79-27-000, RM79-76-252, RM80-12-000, RM80-38-000, RM81-30-000, RM81-35-000, RM82-1-000, RM82-8-000, RM82-17-000, RM82-19-000, RM82-20-000, RM82-26-000, RM82-32-000, RM82-33-000, RM83-46-000, RM84-7-000, RM84-13-000, RM84-17-000]

AGENCY: Federal Energy Regulatory Commission DOE.

ACTION: Order granting rehearing for purposes of further consideration.

SUMMARY: On December 5, 1986, the Federal Energy Regulatory Commission (Commission) issued Order No. 459 terminating eighteen rulemaking dockets. On January 5, 1987, four applicants filed for rehearing of Commission Order No. 459, pursuant to Rule 713 of the Commission's rules of practice and procedure.

In this order, the Commission grants rehearing of its decision solely for the purpose of further consideration.

EFFECTIVE DATE: February 4, 1987.

FOR FURTHER INFORMATION CONTACT: Michael A. Stosser, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Petition for Rulemaking in the Matter of Determinations Whether Wells Drilled in More than 500-Foot Water Depth Should be Determined to be "High Cost Gas" Under Section 107(c)(5) of the Natural Gas Policy of 1978; Docket No. RM79-27-001.

Petition of Montana-Dakota Utilities Company to Reopen Order No. 99; Docket No. RM79-76-253, 254.

New, Onshore Production Wells; Proposed Rulemaking Amending Final Regulations Implementing the Natural Gas Policy Act of 1978; Docket No. RM80-12-001.

High-Cost Natural Gas Produced from Wells Drilled in Deep Water; Docket No. RM80-38-001, 002.

Petition for Rulemaking to Restrain Prices for Deregulated Gas; Docket No. RM81-30-001.

Petition for Rulemaking for Implementation of the Commission's Rulemaking Authority to Require Filing of Contracts Under section 315(c) of the Natural Gas Policy Act; Docket No. RM81-35-001.

Petition for Rulemaking to Establish Revised Policies Under the Natural Gas Act Respecting the Purchase and Use of Gas; Docket No. RM82-1-001.

High-Cost Natural Gas Produced from Intermediate Deep Drilling; Docket No. RM82-8-001.

Petition for Rulemaking to Investigate and Establish Rules Mitigating Market Distortions Under the Natural Gas Policy Act; Docket No. RM82-17-001.

Petition to Institute a Proceeding, Pursuant to the Natural Gas Policy Act, sections 104(b) and 106(c), to Increase the Price of Flowing Interstate Natural Gas; Docket No. RM82-19-001.

Petition for Rulemaking to Require Filing of Contracts Under section 315(c) of the Natural Gas Policy Act; Docket No. RM82-20-001.

Impact of the Natural Gas Policy Act on Current and Projected Natural Gas Markets; Docket No. RM82-26-001.

Limitation on Incentive Prices for High-Cost Gas to Commodity Values; Docket No. RM82-32-001, 002.

Comments in Opposition to Proposed Rulemaking in the Matter of High-Cost Gas Produced from Tight Formations, Docket No. RM79-76 (Ohio-2); Docket No. RM82-33-001, 002.

Petition for Rulemaking in the Matter of Take-or-Pay Clauses in Producer/Pipeline Contracts; Docket No. RM83-46-001.

Impact of Special Marketing Programs on Natural Gas Companies and Consumers; Docket No. RM84-7-001.

Petition for Rulemaking on the Effect of Price Escalator Clauses; Docket No. RM84–13–001.

Petition for Rulemaking in the Matter of Reformation of Take-or-Pay Clauses; Docket No. RM84–17–001.

Order Granting Rehearing for Purposes of Further Consideration

(Issued February 4, 1987).

On January 5, 1987, certain applicants [1] filed for rehearing of Commission Order No. 459 [2] pursuant to Rule 713 of the Commission's rules of practice and procedure.[3] Order No. 459 terminated eighteen rulemaking dockets.

The Commission orders:

To have sufficient time to consider the issues raised in these applications the Commission grants rehearing of Order No. 459 solely for the purpose of further consideration. This order is effective on the date of issuances. This action does not constitute a grant or denial of any application on its merits, either in whole or part. As provided in § 385.713 of the Commission's rules of practice and procedure (18 CFR 385.713), no answers to these applications will be entertained by the Commission.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–2636 Filed 2–6–87; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 619]

Ozark Highlands, South Central Missouri Viticultural Area; Establishment

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in south central Missouri, to be known as "Ozark Highlands." This proposal is the result of a petition submitted by the Ozark Highland Vintners, an association of seven bonded wineries in the proposed area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will enable winemakers to label wines more precisely and will help consumers to better identify the wines they purchase.

COMMENT DATE: Written comments must be received by March 26, 1987.

ADDRESSES: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385, (Notice No. 619).

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226; (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 provide for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

Part 9 of 27 CFR provides for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF has received a petition, prepared by Mr. Laurence R. Carver of the Carver Wine Cellar and submitted on behalf of the Ozark Highland Vintners. The Ozark Highland Vintners is an association of seven Missouri wineries, of which the Carver Wine Cellar is one. The petition proposes establishment of a viticultural area to be known as "Ozark Highlands." All seven of the bonded wineries forming the Ozark Highland Vintners are located in the proposed area. An eighth winery in the area is not a member of that organization.

The proposed area includes portions of eleven Missouri counties, namely, Phelps, Maries, Osage, Gasconade, Franklin, Crawford, Texas, Shannon, Dent, Reynolds, and Pulaski. The area contains an estimated 2,000 square miles, within which there are approximately 500 acres planted to winegrapes. (Another 500 acres are in table grapes.) Grapes have been grown in the area since 1898, and commercial winemaking dates from 1930. The proposed area is entirely within the boundaries of the approved "Ozark Mountain" viticultural area.

Geography of the Area

According to the petition, the term " 'Ozark Highlands' refers specifically to the region formed by the undissected northern uplands of the Ozark plateau." The most distinctive of the region's distinguishing geographical features is its topography. Topographically, the proposed viticultural area consists of an elevated plateau, surrounded by highly dissected river and stream valleys. Relative to the surrounding areas, the "Ozark Highlands" are flat. They are also higher in elevation than their immediate surroundings. To support the claim of a topographical distinction, the petitioner submitted a map titled "Topography of Missouri," prepared in 1978 by the Geology and Land Survey of the Missouri Department of Natural Resources. This map shows the proposed "Ozark Highlands" area to be "Isolated Rolling Plains," which are surrounded by "Highly Dissected Plateaus." The topographical distinction is also apparent by examination of contour lines on the U.S.G.S. maps that

[1] Exxon Corporation, Texas Gas Transmission Corporation, Texas Eastern Transmission Corporation, and Williams Natural Gas Company. Applicants respectively request rehearing of the termination of certain of the above-captioned dockets.

[2] 37 FERC ¶ 61,212 (1986).

[3] 18 CFR 385.713 (1986).

the petitioner submitted. One effect of topography on the viticulture of the "Ozark Highlands" is described by the petitioner as follows: "The higher elevations are often in the form of flat to rolling 'ridge tops' producing prominent and completely unshaded hilltops that are excellent sites for vineyards."

The "Ozark Highlands" can also be distinguished from surrounding areas by soil. In support of this distinction, the petitioner submitted a publication of the U.S. Department of Agriculture's Soil Conservation Service, entitled *Missouri General Soil Map & Soil Association Descriptions.* This publication shows that the soils of the Lebanon-Hobson-Clarksville series are especially distinctive of the proposed area. This soil series occurs extensively within the proposed area, but is found in only a few isolated spots outside of it. Other soils in the proposed area include the Gerald-Union-Goss series and the Hobson-Coulstone-Clarksville series. The latter series occurs to a limited extent within the proposed area, but immediately outside of the area, it becomes predominant.

Distinctive soil patterns often reflect distinctive underlying geologic structures. That this is so in the "Ozark Highlands" is demonstrated by a map called "Geologic Map of Missouri," published in 1979 by the Missouri Geological Society. A copy of this map was submitted by the petitioner. It shows that the soil of the proposed viticultural area is predominantly derived from the Roubidoux Formation, with some Smithville Formation and Pennsylvanian Undifferentiated. That pattern contrasts with the Gasconade Dolomite soil in many of the immediately surrounding areas.

Finally, it is possible to distinguish the "Ozark Highlands" from surrounding areas on the basis of climate. The petition states: "These upper portions are relatively frost-free for longer periods of the year. The cooler frost-causing air in the Spring and Fall of the year flows down the hillsides from the higher to the lower elevations, especially into the deeply trenched river valleys. This leaves the . . . Highlands relatively frost free as compared to the lower elevations."

Name of the Area

On occasion, the name "Ozark Highlands" has been used synonymously with "Ozark Mountains" to refer to the entire Ozark region, encompassing most of southern Missouri and northern Arkansas. (For example, see *The Geography of the Ozark Highland of Missouri* by Carl O. Sauer, University of Chicago Press, 1920, and *Early History of the Northern Ozarks* by Gerard Schultz, M.A., Midland Printing Company, 1937.) However, in recent years, the name "Ozark Highlands" has developed an additional meaning. Due to the efforts of the Ozark Highland Vintners, this name has come to refer specifically to the more limited area proposed in this Notice. To demonstrate this, the petitioner submitted more than a dozen newspaper clippings and magazine articles relating to wine production in the "Ozark Highlands" area. In each case, the name "Ozark Highlands" refers to the petitioned area, not to the entire Ozark region. One such article even includes a map pinpointing the location of the area within the State of Missouri. The articles are from well-known local and national publications, including the *St. Louis Post-Dispatch* and *Wines and Vines.*

Under 27 CFR 4.30(a) and 4.64(a)(1), no wine label or advertisement may be misleading. However, ATF believes that the name "Ozark Highlands," if used to refer to the area proposed in this Notice, would not be misleading, because: (1) A viticultural area encompassing the entire Ozark region has already been approved under the name "Ozark Mountain" (see T.D. ATF-231, 51 FR 24142), and (2) the broad meaning of "Ozark Highlands" (having reference to the entire Ozark region) seems to be found primarily in geological and geographical treatises, whereas the narrower meaning is found in publications having wide popular distribution (e.g. newspapers), and in contexts relating to wine and viticulture.

Therefore, ATF believes that the regulatory requirement for evidence supporting the proposed name has been met, and that use of the proposed name in wine labeling and advertising would not be misleading. Nevertheless, comments are requested concerning the appropriateness of the proposed name, and as to whether any other name for this area would be more appropriate. Possible alternative names could include the following: "Missouri Ozark Highlands," "Ozark Highlands of Missouri," and "Ozark Highlands (Missouri)." Commenters may also suggest other names. (A further possibility is that "Missouri" could be required to appear in direct conjunction with "Ozark Highlands," but be permitted in reduced type on labels—as with "Solano County Green Valley" (§ 9.44) and "Sonoma County Green Valley" (§ 9.57).)

Boundaries of the Area

The natural boundaries of the proposed "Ozark Highlands" viticultural area are extremely convoluted. It would be impossible to define those boundaries precisely and functionally by features that appear on the U.S.G.S. maps submitted by the petitioner. Accordingly, this Notice proposes boundaries that define the proposed area as closely as practicable on those maps. The proposed boundaries reflect the location of the "Ozark Highlands" on land generally over 1,000 feet in elevation, between a number of major rivers and streams. Those rivers and streams are: The Big Piney, Gasconade, Bourbeuse, Meramec, and Current Rivers, and Jack's Fork. The proposed boundaries include all land associated with the geographical features distinguishing the area, as discussed above under *Geography of the Area.* See proposed § 9.115, below, for a complete description of the boundaries.

The proposed boundaries would place the "Ozark Highlands" viticultural area entirely within the approved "Ozark Mountain" viticultural area. In proposing a viticultural area based on geographical features that affect viticultural features, ATF recognizes that the distinctions between a smaller area and its surroundings are more refined than the differences between a larger area and its surroundings. It is possible for a large viticultural area to contain smaller approved viticultural areas, if each area fulfills the requirements for establishment of a viticultural area.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal, because the Notice of Proposed Rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities. Further, the proposal will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this Notice of Proposed Rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of February 17, 1981, the Bureau

has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this Notice, because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments concerning this proposed viticultural area from all interested persons. Further, while this document proposes possible boundaries for the "Ozark Highlands" viticultural area, comments concerning other possible boundaries for this area will be given consideration.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as suggestions for future ATF action.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all the circumstances, whether a public hearing will be held.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, Wine.

Drafting Information

The principal author of this document is Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Issuance

Accordingly, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph A. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. B. The table of sections in 27 CFR Part 9, Subpart C, is, amended to add the title of § 9.115, to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

* * * * *

Sec.
9.115 Ozark Highlands.
* * * * *

Par. C. Subpart C of 27 CFR Part 9 is amended by adding § 9.115, which reads as follows:

§ 9.115 Ozark Highlands.

(a) *Name.* The name of the viticultural area described in this section is "Ozark Highlands."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Ozark Highlands viticultural area are three U.S.G.S. maps of the 1:250,000 series. They are titled:

(1) Rolla, Missouri; Illinois, 1954 (revised 1969).

(2) St. Louis, Missouri; Illinois, 1963 (revised 1969).

(3) Springfield, Missouri, 1954 (revised 1969).

(c) *Boundary*—(1) *General.* The Ozark Highlands viticultural area is located in south central Missouri. The area comprises portions of the following counties: Phelps, Maries, Osage, Gasconade, Franklin, Crawford, Texas, Shannon, Dent, Reynolds, and Pulaski. The begining point of the following boundary description is the junction of Little Piney Creek and the Gasconade River, near Jerome, Missouri (in the northwest corner of the Rolla map).

(2) *Boundary description*—(i) From the beginning point, the boundary goes northward along the Gasconade River to the latitude line 38°00′ (the dividing line between the Rolla and St. Louis maps);

(ii) Then eastward along that latitude line to U.S. Highway 63;

(iii) Then northward along U.S. 63 to Spring Creek;

(iv) Then north-northwestward along Spring Creek to the Gasconade River;

(v) Then northward along the Gasconade River to a power transmission line (less than 1 mile north of Buck Elk Creek);

(vi) Then eastward and east-northeastward along that power transmission line to Missouri Route 19;

(vii) Then southward along Route 19 to the Bourbeuse River;

(viii) Then east-northeastward along the Bourbeuse River to the range line dividing R. 2 W. and R. 1 W.;

(ix) Then southward along that range line to the Meramec River;

(x) Then southwestward along the Meramec River to Huzzah Creek;

(xi) Then southward along Huzzah Creek to Dry Creek (on the Rolla map, where Missouri Route 8 crosses Huzzah Creek);

(xii) Then southward along Dry Creek to Cherry Valley Creek;

(xiii) Then south-southwestward along Cherry Valley Creek to Missouri Route 19;

(xiv) Then southward and southwestward along Route 19 to Crooked Creek;

(xv) Then northwestward along Crooked Creek to the Meramec River;

(xvi) Then southward along the Meramec River to Hutchins Creek;

(xvii) Then southeastward along Hutchins Creek to its source near Missouri Route 32, across from the Howes Mill Post Office;

(xviii) Then in a straight line toward the Howes Mill Post Office to Route 32;

(xix) Then eastward along Route 32 to the range line dividing R. 3 W. and R. 2 W.;

(xx) Then southward along that range line to the township line dividing T. 33 N. and T. 32 N.;

(xxi) Then westward along that township line (which coincides, in R. 3 W., with the Reynolds County/Dent County line) to the boundary of Clark National Forest;

(xxii) Then generally southward along that national forest boundary to the Dent County/Shannon County line;

(xxiii) Then westward along that county line to the Current River;

(xxiv) Then southeastward along the Current River to Missouri Route 19;

(xxv) Then southward along Route 19 to Jack's Fork;

(xxvi) Then westward, southwestward and northwestward along Jack's Fork, taking the North Prong, to its northwesternmost source;

(xxvii) Then in a straight line northwestward to the southeasternmost source of Hog Creek;

(xxviii) Then northwestward along Hog Creek to the Big Piney River (on the Springfield map);

(xxix) Then northward along the Big Piney River to the township line dividing T. 35 N. and T. 36 N.;

(xxx) Then eastward along that township line to Little Piney Creek (on the Rolla map);

(xxxi) Then northward and westward along Little Piney Creek to the beginning point.

Approved: January 30, 1987.

Stephen E. Higgins,

Director.

[FR Doc. 87-2534 Filed 2-6-87; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[86-40]

Safety Zone; San Juan Harbor, San Juan, PR

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering establishing a Safety Zone in the Army Terminal Turning Basin in San Juan Harbor. A new Liquified Petroleum Gas (LPG) facility is being constructed in this area, and this safety zone is needed to protect its operations. The safety zone would prevent vessels from coming within 100 yards of an LPG carrier while inside San Juan Harbor and vessels greater than 100 feet from using the Army Terminal Turning Basin while a LPG carrier is in port, without first obtaining permission from the Captain of the Port, (COTP).

DATES: Comments must be received on or before March 26, 1987.

ADDRESSES: Comments should be mailed to Marine Safety Office, P.O. Box S-3666, Old San Juan, PR 00904. The Comments and other materials referenced in this notice will be available for inspection and copying at the Marine Safety Office, La Puntilla Final, Old San Juan, PR. Normal office hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG John R. Bingaman at telephone number (809) 725-0857.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (86-40) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafter of this notice is LTJG John R. Bingaman, project officer, and LCDR S. T. Fuger, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

The New LPG terminal is being constructed in San Juan Harbor immediately adjacent to the Army Terminal Turning Basin. In addition, there is already a facility that currently handles LPG on a routine basis in this same area. The configuration of the new facility is such that LPG vessels will extend into the Turning Basin. The Army Terminal Turning Basin is at the junction of two channels; the Army Terminal Channel and the Puerto Nuevo Channel and requires vessels to navigate an extremely sharp turn in order to transit between the channels. Within the past year, there have been two vessel casualties in this area where vessels attempting to make the turn have been involved in collisions. These casualties are in part due to the extreme difficulty in navigating in this area.

LPG is a Cargo of Particular Hazard and as such poses serious risks. The consequences of a vessel casualty involving an LPG vessel could be catastrophic. Given this risk, the configuration of the waterway in the area, and its recent accident history, the Coast Guard feels that a Safety Zone is appropriate to protect the LPG vessels and facilities from accidents.

The Safety Zone is designed to prevent large, relatively unmaneuverable vessels from transiting the Army Terminal Turning Basin while a non gas-free LPG carrier is moored there. Small craft such as Pilot boats and tugs would be permitted to transit the area. However, these small craft would be required to remain 100 yards away from any LPG vessel.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Those vessels greater than 100 feet will not be significantly affected by this safety zone. When an LPG carrier is in port, vessels requiring access to Puerto Nuevo Channel can transit Graving Dock Channel via Army Terminal Channel. While an LPG carrier is transiting San Juan Harbor, only minor delays to other mariners can be foreseen.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. Section 165.740 is added to read as follows:

§ 165.740 San Juan Harbor, San Juan, PR.

(a) The waters and waterfront facilities located within the following areas are established as Safety Zones during the specified conditions:

(1) For inbound non gas-free Liquified Petroleum Gas (LPG) carriers; the waters within a 100 yard radius of the LPG carrier while the vessel transits the waters of San Juan Harbor to the LPG receiving facility commencing with it's entry into the Bar Channel.

(2) For non gas-free LPG carriers maneuvering in the vicinity of the Army Terminal Turning Basin and when an LPG carrier is moored; a line beginning at the point located at 18 Deg 26'01.0" N. Latitude, 66 Deg 6'40.5" W. Longitude; thence 050 Deg T to Army Terminal Channel bouy "7" located at 18 Deg 26'9.5" N. Latitude, 66 Deg 6'29.0" W. Longitude; thence 150 Deg T to Army Terminal Channel bouy "9" located at 18

Deg 26'01.0" N., 66 Deg 6'24.0" W. Longitude; thence 103 Deg T to Puerto Nuevo Channel bouy "1" located at 18 Deg 25'59" N. Latitude, 66 Deg 6'17.C" W. Longitude; thence 160 Deg T to a point located at 18 Deg 25'55" N. Latitude, 66 Deg 06'15" W. Longitude; and an area extending 100 yards shoreward of the LPG terminal.

(3) For outbound non gas-free LPG carriers, the waters within a 100 yard radius of the LPG carrier while the vessel transits the waters of San Juan Harbor until the vessel exits the Bar Channel.

(4) The general regulations governing safety zones contained in 33 CFR 165.23 apply; with the exception that vessels less than 100 feet in length are allowed in the Army Terminal Turning Basin. Such vessels, however, must remain at least 100 yards away from any non gas-free LPG vessel.

(5) The Captain of the Port will notify the maritime community of periods during which this safety zone will be in effect by providing advance notice of scheduled arrivals and departures of loaded LPG vessels via a Marine Safety Information Radio Broadcast.

Dated: January 27, 1987.

M. W. Brown,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, San Juan, PR.

[FR Doc. 87-2441 Filed 2-6-87; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL MARITIME COMMISSION

46 CFR Part 550

[Docket No. 87-1]

Automobile Measurement Rule

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its rules pertaining to the publishing, filing and posting of tariffs in domestic offshore commerce to permit the rating of automobiles on other than a weight or cube measurement basis.

DATE: Comments due on or before March 11, 1987.

ADDRESS: Comments (original and 20 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT:

Robert G. Drew, Director, Bureau of Tariffs, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5796

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740

SUPPLEMENTARY INFORMATION:

On September 19, 1986, Matson Navigation Company, Inc. (Matson) filed a Petition for Rulemaking (Petition) urging the Commission to amend its regulations to permit the publication of rates for automobiles on other than a weight or measurement basis. At present, 46 CFR 550.5(b)(8)(xiv) reads in part:

> (xiv) *Automobile measurement.* When rates for automobiles are published (or the published rate tariff does not specifically prohibit carriage of automobiles), the basis for applying these rates must be stated in terms of either weight or measurement, but not both. One of the following rules (i.e., (A) or (B)) must be employed in its entirety. . . .

Subparagraph (A) requires that all measurement rates be based on the *cubic measure* of the automobile being shipped. Alternatively, subparagraph (B) requires automobiles to be rated on the basis of *weight.*

By its Petition, Matson requested that the introductory paragraph of 46 CFR 550.5(b)(8)(xiv) be amended to read:

> (xiv) *Automobile Rates.* If rates for automobiles are published on a weight or measurement basis, one of the following rules (i.e., (A) or (B)) must be employed in its entirety. . . .

The requested amendment would preserve the existing requirements governing rates applied on a measurement or weight basis, if that is the basis utilized. However, it would also permit freighting on other bases such as "per unit."

The Commission published Matson's Petition in the **Federal Register** (51 FR 34502) and requested comments from interested parties. Chrysler Motors (Chrysler) filed a comment in support of Matson's Petition.

In urging amendment of the Commission's existing automobile measurement regulation, Matson alleged that circumstances concerning the carriage of automobiles have changed substantially since 1967, when the Commission adopted the present rule in *Uniform Weights and Measurements of Automobiles,* 9 S.R.R. 148 (FMC, 1967). Matson argued that "[t]he costs of stevedoring and transporting automobiles in garage stalls, automobile frames and containers bear little relation to vehicle weight or cube."

Matson also claimed the automobile manufacturers prefer a "per unit" charge which would be simpler to apply and would readily lend itself to computerization. Finally, Matson stated that because competing carriers that are subject to the jurisdiction of the Interstate Commerce Commission are not precluded from rating automobiles on a per unit basis, Matson is placed at a competitive disadvantage by the existing rule.

In support of Matson's proposed rule, Chrysler advised that it favors a "per unit" rate because it is simple to apply and could be readily computerized.

Discussion

The need for a uniform automobile measurement rule was discussed by the Commission in *Uniform Weights and Measurements of Automobiles,* the rulemaking proceeding that established the current rule. The Commission explained there:

> Because passenger automobiles vary extensively in size and are susceptible to mismeasurement it is believed that publication of uniform measurements is a necessity in order to provide identical treatment for all such shipments; to enable shippers of automobiles to accurately ascertain ocean transportation charges prior to movement; and to facilitate billing of automobile shipments by the carrier.

9 S.R.R. at 149.

Nevertheless, Matson may be correct in stating that, at present, the cost of transporting an automobile may have little relation to the vehicle's weight or cube. The regulations governing financial reports in the domestic offshore trades, 46 CFR 552.5(h), state in part:

> In computing cargo cube for containerized cargo, the outside dimensions of the container, trailer or other equipment shall be used.

Thus, in the case of automobiles moving in containers or frames, the outside dimensions of the container or frame would be used in calculating the cargo cube for cost allocation purposes. The actual dimensions of an automobile being carried in a container or frame are irrelevant to the allocation of cost. This suggests that it may no longer be appropriate for the Commission to require that *all* automobiles, even those carried in frames or containers, be rated on the weight or cubic measurement of the vehicle.

Accordingly, the Commission is instituting a rulemaking proceeding for the purpose of removing the prohibition against rates that are not based upon weight or cube. The proposed rule will take the form of Matson's proposal. This will leave the rules pertaining to the rating of automobiles on the basis of cube or weight but would permit the rating of automobiles on other bases, such as per unit.

As an alternative to the rule proposed, the Commission could repeal the automobile measurement rule in its entirety. Without a specific rule pertaining to automobiles, the carriers would be free to rate automobiles in the same fashion that they rate other types of cargo. This alternative approach would also avoid the expense of publishing the *Automobile Manufacturers Measurements*. The Commission is therefore also inviting comment on the possible deletion of the automobile measurement rule in its entirety.

The Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; or

(3) Significant adverse effects on competition, employment, investment productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

List of Subjects in 46 CFR Part 550

Maritime carriers, Reporting and recordkeeping requirements, Rates and fares.

The Paperwork Reduction Act, 44 U.S.C. 3501–3520, does not apply to this Notice of Proposed Rulemaking because the proposed amendments to Part 550 of Title 46, Code of Federal Regulations, do not impose any additional reporting or recordkeeping requirements or change the collection of information from members of the public which require the approval of the Office of Management and Budget.

PART 550—[AMENDED]

Therefore, for the reasons set forth above, Part 550 of Title 46, Code of Federal Regulations, is proposed to be amended as follows:

1. The authority citation for Part 550 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817(a), 820, 833a, 841a and 843–847.

2. Section 550.5(b)(8)(xiv) introductory text is revised to read as follows:

§ 550.5 Contents of Tariffs.

* * * * *

(b) * * *

(8) * * *

(xiv) *Automobile rates.* If rates for automobiles are published on a weight or measurement basis, one of the following rules (i.e., (A) or (B)) must be employed in its entirety:

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87–2644 Filed 2–6–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 86–404]

Specialized Mobile Radio Service; Order Extending Comment Period

AGENCY: Federal Communication Commission.

ACTION: Proposed rule extension of comment period.

SUMMARY: The Commission has extended the date for filing comments to the Notice of Proposed Rulemaking in this proceeding dealing with amendment to Subparts M and S of Part 90 of the Commission's Rules. This extention was in response to a request by the National Association of Business and Educational Radio, Inc. for additional time to study the significant policy implications of the Commission's proposals.

DATES: Comments are due on February 20, 1987. Reply comments are due on April 3, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ronald Netro, Private Radio Bureau (202) 634–2443.

SUPPLEMENTARY INFORMATION:

Adopted: January 23, 1987.

Released: January 28, 1987.

By the Chief, Private Radio Bureau.

1. On October 16, 1986, the Commission adopted a *Notice of Proposed Rule Making (Notice)* in the above captioned matter. A summary of this *Notice* appeared in the **Federal Register**, 51 FR 45025, on December 16, 1986. Comments are due by January 30, 1987, and reply comments by March 13, 1987.

2. On January 14, 1987, the National Association of Business and Educational Radio, Inc. (NABER) filed a request to extend both the comment and reply comment dates. NABER supports its request by emphasizing the significant departure of the proposed rules to current Commission policy regarding the 800 MHz spectrum. Specifically, NABER points to the elimination of loading standards and to the expansion of eligible users of Specialized Mobile Radio (SMR) systems as being issues deserving considerable legal and policy attention. As a related issue, NABER references a separate proceeding, PR Docket No. 86–160, regarding inter-category sharing that could have a direct impact and must be fully reviewed before commenting on the current proceeding. NABER therefore requests adequate time to address the novel and interrelated issues presented in the *Notice*.

3. We recognize the complexity and importance of the Commission's proposals as well as the impact such proposals may have on the SMR industry. Furthermore, complete and considered comments are essential to the Commission's reaching a valued decision in the public interest. Therefore, to permit additional time to review the proposals and to formulate positions, we are extending the comment periods in the subject *Notice*.

4. Accordingly, *It Is Ordered*, pursuant to the authority set forth in § 0.331 of the Commission's Rules and Regulations, that interested parties will have until February 20, 1987 to file comments and until April 3, 1987 to file reply comments in this proceeding.

Federal Communications Commission.

Michael T.N. Fitch,

Chief, Private Radio Bureau.

[FR Doc. 87–2533 Filed 2–6–87; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 52, No. 26
Monday, February 9, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[Case No. OEE-4-86]

Order Renewing Temporary Denial of Export Privileges; George Lartides and Globtime Commercial Services Ltd.

In the Matter of: George Lartides, with addresses at Ellis 3 Strovolos, Nicosia, Cyprus and c/o Globtime Commercial Services Ltd., 9 Zenonos Kitieos Street, P.O. Box 1223, Nicosia, Cyprus, Respondent.

The Office of Export Enforcement, International Trade Administration, United States Department of Commerce (Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations, 15 CFR Parts 368 through 399 (1986) (the Regulations), issued pursuant to the Export Administration Act of 1979, 50 U.S.C. app. sections 2401 through 2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) (the Act), has asked the Deputy Assistant Secretary for Export Enforcement to renew an order temporarily denying all United States export privileges to respondents George Lartides,[1] individually and doing business as Stamatiou & Lartides Ltd. (S&L), and MIS Services Ltd. (hereinafter collectively referred to as respondents). All respondents named by the Department reside or are located in Nicosia, Cyprus. The initial order was issued on December 5, 1986 (51 FR 44660, December 11, 1986).

The Department states that, as a result of an ongoing investigation, it has reason to believe that respondents have (1) engaged in the unauthorized reexport of U.S.-origin commodities, including computer equipment, from Cyprus to proscribed destinations, including the Soviet Union, and (2) indirectly caused by filing of false and misleading information with the Department for the purpose of effecting reexports from Western Europe to Cyprus and through Cyprus to proscribed destinations.

The Department further states that it has reason to believe that the respondents are continuing in their efforts to obtain U.S.-origin goods for diversion from Cyprus to proscribed destinations by misrepresenting the ultimate destination of the goods to be purchased. If the respondents are successful in their continuing efforts to acquire U.S.-origin goods, the Department states that there is reason to believe respondents would again attempt to reexport them to proscribed destinations without obtaining the required authorization from the Department.

The Department states that its investigation gives it reason to believe that the violations under investigation were deliberate, covert and likely to occur again. The Department submits that a temporary denial order naming respondents is necessary in order to give notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations. Furthermore, the Department has represented that Data Services Ltd., Globtime Commercial Services Ltd., Officeworld Business Systems Ltd. and Computer Manufacturers Ltd. are parties related to at least one of the respondents in the conduct of trade or related services and should also be temporarily denied export privileges to prevent evasion of this order. All related parties named by the Department are located in Nicosia, Cyprus.

In response to the Department's request for renewal, the firms Stamatiou and Lartides Ltd. of Nicosia and Data Services Ltd. of Nicosia have filed an opposition before the Deputy Assistant Secretary for Export Enforcement. This document seeks to establish that George Lartides no longer maintains any "legal, beneficial or other interests" in either company. Attached to the opposition are ledger statements showing the complete sale of all shares held by George Lartides in both companies to the remaining partner. These statements are accompanied by a statement by a known accounting firm corroborating the transfer of funds. Also accompanying these statement in an affadavit sworn in Cypriot court indicating the severance of affiliation of George Lartides with the firms Stamatiou and Lartides Ltd. and Data Services Ltd.

I find there is an insufficient showing on the part of the Department supporting the claim that George Lartides carries out or directs business as Stamatiou and Lartides Ltd. or as Data Services Ltd. or is otherwise affiliated with these firms. Given that the violations under investigation by the Department are suspected of having been directed by George Lartides, at this time there is no independent reason for continuing the denial of privileges against these firms which are not shown to be related to him. Therefore, the name Stamatiou and Lartides Ltd. has been removed as a respondent and Data Services Ltd. is no longer listed as a known related party. However, § 37.12(c) of the Regulations states "orders which revoke or deny the export privileges of any person . . . may provide that the terms and prohibitions of such orders apply not only to the person expressly named therein but also, for the purpose of preventing evasion, to any other person, firm, corporation or other business organization with which that person may then or thereafter (during the term of the order) be related of affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services." Sections III and IV of this order do provide for the terms and prohibitions of this order to apply to parties not expressly named and would apply to Stamatiou and Lartides Ltd. or Data Services Ltd. were either firm to consider conducting business with a denied party in the future.

In the case of MIS Services Ltd., I note the failure on the part of the Department to serve this respondent with the request for renewal, thereby denying the firm knowledge of this action and the ability to submit opposition as provided by the Regulations. Without passing judgment as to the threat of imminent violation posed by this party, I decline to renew this order with respect to any party not properly served as provided by the Regulations. Therefore, for the purpose of this renewal of the temporary denial order, the name of MIS Services Ltd. has

[1] "George" Lartides is also know as "Georgios" Lartides.

been removed from the list of respondents.

Finally, in the case of George Lartides, two letters have been received from him contesting the order. In both his letter to the Deputy Assistant Secretary dated December 12, 1986 and his letter to the Administrative Law Judge dated January 15, 1987, Lartides disputes the claims of the Department but offers no evidence. He does, however, offer to talk with the Department and present necessary documentation.

Despite this offer of assistance, and based upon the showing made by the Department, I find that an order temporarily denying all United States export privileges to the sole respondent, George Lartides, and to parties related to him is necessary in the public interest to prevent an imminent violation of the Act and the Regulations.

Accordingly, it is hereby ordered,

I. All outstanding individual validated export licenses in which any respondent appears to participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. The respondent, his successors, or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participating, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying or negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which any respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services. Those parties now known to be related to at least one of the respondents, and which are accordingly subject to the provisions of this order, are:

GLOBTIME COMMERCIAL SERVICES LTD. with addresses at:

MITSI Building 3, Flat 608, 6th Floor, Nicosia, Cyprus.

and

9 Zenonos Kitieos Street, P.O. Box 1223, Nicosia, Cyprus.

OFFICEWORLD BUSINESS SYSTEMS LTD., P.O. Box 1604, 22 Ionos Street, Nicosia, Cyprus.

and

COMPUTER MANUFACTURERS LTD., c/o Stamatiou & Lartides, Ltd., P.O. Box 1604 Ionos Street, Nicosia, Cyprus.

IV. No person, firm, coporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the respondent or any related party, or whereby the respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 388.19(e) of the Regulations, the respondent may, at any time, appeal this temporary denial order and any related party may appeal the issue of his relationship by filing with the Office of Administrative Law Judges, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective February 3, 1987 and shall remain in effect for 60 days.

VII. In accordance with the provisions of § 388.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. The respondent may oppose any request to renew this temporary denial order by filing a written submission with the Deputy Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served upon respondent and published in the **Federal Register.**

Dated: February 3, 1987.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 87-2668 Filed 2-6-87; 8:45am]

BILLING CODE 3510-DR-M

President's Export Council

International Competitiveness and Productivity Subcommittee Meeting; Open Meeting

A meeting of the President's Export Council Subcommittee on International Competitiveness and Productivity will be held February 23, 1987, 10:00 a.m.-12:00 p.m. and 12:45 p.m.-2:30 p.m. in Room 4830 of the Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC. The Council's purpose is to advise the President on matters relating to United States export trade.

Open Session

The Subcommittee will discuss requirements for national competitiveness. Under consideration will be steps to increase productivity, decrease capital-related costs, limiting the growth of U.S. indebtness, and other related matters.

The meeting will be open to the public with a limited number of seats available. For further information, reservations to attend the meeting, or copies of the minutes, contact Laureen Daly, (202) 377-1125.

Dated: February 2, 1987.

Wendy H. Smith,

Director, President's Export Council.

[FR Doc. 87-2669 Filed 2-6-87; 8:45 am]

BILLING CODE 3510-DR-M

Trade Expansion Subcommittee Meeting, President's Export Council; Open Meeting

A meeting of the President's Export Council Trade Expansion Subcommittee will be held February 24, 1987, 9:30 a.m.-12 noon in the Departmental Auditorium Conference Room, Constitution Avenue, NW., between 12th & 14th Streets, Washington, DC. The Subcommittee's purpose is to advise the President's Export Council on matters relating to trade expansion.

Agenda

Opening remarks; presentations on disincentives for agricultural trade, small business issues, mixed credits, Eximbank, and trade legislation relating to trade expansion.

The meeting will be open to the public with a limited number of seats available. For further information, or copies of the minutes, contact Sylvia Lino, (202) 377-1125.

Dated: February 2, 1987.

Wendy H. Smith,

Director, President's Export Council.

[FR Doc. 87-2670 Filed 2-6-87; 8:45 am]

BILLING CODE 3510-DR-M

[P-146-B]

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit: Dr. Steven L. Swartz

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531 through 1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217 through 222).

1. Applicant: Dr. Steven L. Swartz, Cetacean Research Associates, P.O. Box 7990, San Diego, California 92107.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: A permit is requested to radio tag up to 10 individual gray whales (*Eschrichtius robustus*) each year for a five year period beginning in winter 1987-88. The whales' movements will be tracked by systematic shore surveys by vehicle and aerial surveys of the California coast from the Farallone Islands and the Point Reyes National Marine Sanctuary in the north, to the U.S.-Mexico border in the south.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administratior for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices.

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: February 3, 1987.

Nancy Foster,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87-2643 Filed 2-6-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending Export Licensing System for Certain Man-Made Fiber Textile Products in Category 670-L Produced or Manufactured in the People's Republic of China

February 3, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 9, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983 and the Bilateral Category 670-L Agreement of September 8 and 9, 1986, the Governments of the United States and the People's Republic of China have agreed to further amend the existing export licensing system to require the use of visas of Category 670-L (luggage in TSUSA numbers 706.3415, 706.4130 and 706.4135), produced or manufactured in the People's Republic of China and exported to the United States beginning on February 1, 1987 and until further notice.

A description of the texile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 3, 1987.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of February 23, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements which established an export licensing system for certain specified categories of cotton, wool, and man-made fiber textile products, produced or manufactured in the People's Republic of China.

Effective on February 9, 1987, the directive of February 23, 1984 is hereby further amended to require that man-made fiber luggage in Category 670-L [1] also be visaed if

[1] In category 670, only TSUSA numbers 706.3415, 706.4130 and 706.4135.

produced or manufactured in the People's Republic of China and exported on or after February 1, 1987.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-2667 Filed 2-6-87; 8:45 am]

BILLING CODE 3510-DR-M

COMMISSION ON EDUCATION OF THE DEAF

Executive Committee; Meeting

AGENCY: Commission on Education of the Deaf.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Commission on Education of the Deaf. The purpose of the meeting is to prepare an agenda package for the Commission meeting planned in March and to prepare a budget for the Commission. This meeting will be open to the public.

DATE: February 16, 1987, 9:00 a.m. until 5:00 p.m.

ADDRESS: Columbia Foyer, Ballroom Level, Hyatt Regency Washington, 400 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy L. Creason, Administrative Officer, Commission on Education of the Deaf, GSA Regional Office Building, Room 6646, 7th and D Streets, SW., Washington, DC 20407, 202/453-4353 (TDD) or 202/453-4684 (voice).

Patricia L. Johanson,

Staff Director, Commission on Education of the Deaf.

February 3, 1987.

[FR Doc. 87-2601 Filed 2-6-87; 8:45 am]

BILLING CODE 6820-SD-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Information School Board of Visitors, Meeting

AGENCY: Defense Information School Board of Visitors, DoD.

ACTION: Notice of meeting.

SUMMARY: A meeting will be held to review administration and content of the Defense Information School's public affairs programs of instruction. The meeting is open to the public and will be conducted in Room 270A, Building 400, The Defense Information School, Ft. Benjamin Harrison, Indiana 46216-6200.

DATES:

March 12, 1987—8:00 a.m. to 4:00 p.m.

and

March 13, 1987—8:00 a.m. to 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Daniel, Director for Management, Office of the Assistant Secretary of Defense Public Affairs, Room 2E811, the Pentagon, Washington, DC 20301. Mr. Daniel's telephone number is (202) 697-8959.

Linda M. Lawson,

Alternate OSD, Federal Register Liaison Officer, Department of Defense.

February 3, 1987.

[FR Doc. 87-2628 Filed 2-6-87; 8:45 am]

BILLING CODE 3810-01-M

Ada Board Environment Panel, Meeting

ACTION: Notice of Meeting.

SUMMARY: A meeting of the Ada Board Environment Panel will be held Wednesday, 18 February 1987 from 8:30 a.m. to 5:00 p.m. at the Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, VA 22311.

FOR FURTHER INFORMATION CONTACT: Dr Erhard Ploedereder, Tartan Laboratories, 447 Melwood Avenue, Pittsburgh, PA 15213 (412) 621-2210.

Linda Lawson,

Alternate Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

February 3, 1987.

[FR Doc. 87-2629 Filed 2-6-87; 8:45 am]

BILLING CODE 3810-01-M

Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Monday, 23 February 1987.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 S. Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will he limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92-463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 3, 1987.

[FR Doc. 87-2626 Filed 2-6-87; 8:45 am]

BILLING CODE 3810-01-M

Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday, 24 February 1987.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 201 Varick Street, New York, NY 10014.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and

memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92-463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 3, 1987.

[FR Doc. 87-2627 Filed 2-6-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Intent To Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings—Otis Air National Guard Wastewater Treatment Plant, Cape Cod, MA

Action: The Air National Guard (ANG) intends to prepare an Environmental Impact Statement (EIS) to assess the environmental implications of a proposed ANG action: the development of new sand filter beds next to the Cape Cod Canal along the northern edge of Camp Edwards, Massachusetts Military Reservation, Cape Cod, Massachusetts for the land disposal of 0.3 MGD of secondarily treated wastewater. A new land disposal location is necessary in order to reduce groundwater contamination caused by current land disposal at the southern boundary of Otis ANG Base. The action requires the construction and operation of a 50,000 foot pipeline and sand filter beds. Implementation of this proposed action also requires a Class III designation by the Commonwealth of Massachusetts for the potentially affected groundwater area.

Alternatives: Other alternatives to be considered are as follows:

(1) Pump treated effluent from the Otis ANGB Base treatment facility for land disposal at the Town of Falmouth facility;

(2) Pump untreated effluent for treatment and disposal at the Town of Falmouth treatment facility;

(3) Use the existing Otis ANG Base treatment facility and dispose of secondarily treated effluent by spray irrigation of vegetation on the Massachusetts Military Reservation;

(4) Install additional equipment on the current Otis ANG treatment facility to remove nitrogen and dispose of treated effluent in the current manner;

(5) Continue operating the current Otis ANG treatment facility (no action).

Interested agencies, organizations, and the general public desiring to submit written comments or suggestions for consideration in connection with the preparation of the EIS are invited to do so and/or attend the public scoping meetings which will be held in order to assist the ANG in identifying significant environmental issues and the appropriate scope of the EIS. Parties who desire to present oral comments at one of the scoping meetings will be allotted approximately five minutes and should provide advanced notice to the ANG. The time and the location of the scoping meetings will be announced in the local news media. Written scoping comments are due by 15 March. Written comments should be addressed to: Mr. William Sullivan, OLAA/PA, Otis ANG Base, Massachusetts, 02542. Questions should be directed to Mr. Sullivan at (617)968-4090.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-2565 Filed 2-6-87; 8:45 am]

BILLING CODE 3910-01-M

Intent To Prepare Environmental Impact Statement; Malmstrom Air Force Base, MT

The United States Air Force, Department of Defense, will prepare an Environmental Impact Statement (EIS) for use in decision making regarding the proposed deployment and operation of the advanced land-based Small Intercontinental Ballistic Missile (Small ICBM) at Malmstrom Air Force Base, Montana.

On November 7, 1986, the Air Force published a Legislative EIS analyzing the full-scale development decision and the concurrent selection of deployment area(s) and basing mode(s) for the Small ICBM. On December 19, 1986, the President announced his decision to proceed with full scale development of the Small ICBM in two Hard Mobile Launcher basing modes. These modes are called Hard Mobile Launchers at Minuteman Facilities and Hard Mobile Launchers in Random Movement. The initial operating capability for the Small ICBM would be achieved in 1992 with the first 200 systems positioned at Minuteman facilities. Malmstrom AFB will serve as the main operating base for these missiles. As a continuation of the tiering process described in the Legislative EIS, this EIS will focus on the impact on Malmstrom AFB and its Minuteman launch facilities of the implementing actions and their alternative, including the no-action alternatives, and on mitigation measures.

The Department of the Air Force is planning to conduct a series of scoping meetings to determine the nature, extent and scope of the issues and concerns that should be addressed in the EIS related to the proposed action. These meetings are scheduled for Conrad, Great Falls, Lewistown and Helena, Montana. Notice of the time and place of the planned scoping meetings will be made available to public officials and announced in the news media in the area where the meeting will be held.

To assure that the Department of the Air Force will have sufficient time to consider public inputs on issues which are to be included in the development of an EIS, comments should be forwarded to the addressee listed below by April 17, 1987.

For further information concerning the Small ICBM program and the EIS activities, contact Lt Col Peter Walsh, AFRCE-BMS/DEV, Norton Air Force Base, California 92409, (714) 382-4891.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-2566 Filed 2-6-87; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Mathews, Office of Federal Acquisition and Regulatory Policy (202) 523-3856.

SUPPLEMENTARY INFORMATION:

a. Purpose

Firms proposing to provide supplies or services to the Government must indicate their type of business to ensure

that any subsequent contracts contain the proper provisions and clauses.

b. Annual reporting burden

The annual reporting burden is estimated as follows: Respondents, *79,397*; responses per respondent, *14*; total annual responses, *1,111,558*; hours per response, *.07*; and total burden hours, *77,810*.

Obtaining Copies of Proposals

Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0046, Type of Business.

Dated: January 27, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–2613 Filed 2–6–87; 8:45 am]

BILLING CODE 6820–61–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Mathews, Office of Federal Acquisition and Regulatory Policy (202) 523–3856.

SUPPLEMENTARY INFORMATION:

a. Purpose

The Miller Act (40 U.S.C. 270a–270e) requires performance and payment bonds for any construction contract exceeding $25,000; unless it is impracticable to require bonds for work performed in a foreign country, or it is otherwise authorized by law. Bonds may be required for other contracts when it is deemed appropriate. When it is appropriate and performance and payment bonds are required the Government may require a bid guarantee.

b. Annual reporting burden

The annual reporting burden is estimated as follows: Respondents, *19,325;* responses per respondent, *4.87;* total annual responses, *94,113;* hours per response, *.42;* and total burden hours, *39,527*.

Obtaining Copies of Proposals

Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0045, Bid, Performance and Payment Bonds.

Dated: January 27, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–2614 Filed 2–6–87; 8:45 am]

BILLING CODE 6820–61–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy, (202) 523–3775.

SUPPLEMENTARY INFORMATION:

a. Purpose

Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air U.S.-flag carrier is available to provide such services. In the event that the contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the contractor shall include a certification on vouchers involving such transportation.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *150;* responses per respondent, *2;* total annual responses, *300;* hours per response, *.25;* and total burden hours, *75*.

Obtaining Copies of Proposals

Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0054, U.S.-Flag Air Carriers Certification.

Dated: January 27, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–2615 Filed 2–6–87; 8:45 am]

BILLING CODE 6820–61–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Mathews, Office of Federal Acquisition and Regulatory Policy (202) 523–3856.

SUPPLEMENTARY INFORMATION:

a. Purpose

The information relative to the place of performance and owner of plant or facility, if other than the prospective contractor, is a basic requirement when contracting for supplies or services (including construction). This information is instrumental in determining bidder responsibility.

responsiveness, and price reasonableness. A prospective contractor must affirmatively demonstrate its responsibility. Hence, the Government must be apprised of this information prior to award.

The contracting officer must know the place of performance and the owner of the plant or facility to (a) determine bidder responsibility; (b) determine price reasonableness; (c) conduct plant or source inspections; and (d) determine whether the prospective contractor is a manufacturer or a regular dealer.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *79,397;* responses per respondent, *14;* total annual responses, *1,111,558;* hours per response, *.07;* and total burden hours, *77,781.*

Obtaining Copies of Proposals

Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0047, Place of Performance.

Dated: January 27, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–2616 Filed 2–6–87; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF ENERGY

Special Isotope Separation Project; Scoping Meeting

AGENCY: U.S. Department of Energy.

ACTION: Notice of public scoping meetings for the Environmental Impact Statement (EIS) for the proposed Special Isotope Separation (SIS) facility.

SUMMARY: Notice is hereby given that the Department of Energy (DOE) has scheduled public scoping meetings to provide an opportunity for public participation and comment regarding the EIS for the SIS Project. On October 31, 1986, (51 FR 39785) the DOE announced its intent to prepare an EIS for siting, constructing and operating the proposed SIS facility based on the Atomic Vapor Laser Isotope Separation (AVLIS) process technology. The purpose of the SIS facility is to segregate the isotopes of DOE's Defense Programs' plutonium into specific isotopic concentrations required for various national defense materials and research activities. More background information on the SIS project is contained in the previously published Notice and should be referred to for more detail.

Several written comments pursuant to the previously published Notice of Intent requested that public scoping meetings be held. In response to these comments, DOE has decided to conduct public scoping meetings and extend the scoping period during which written comments will be received and considered. Once the Draft Environmental Impact Statement (DEIS) has been completed, that document will be made available for public review and additional meetings/hearings will be conducted to solicit public comments.

FOR FURTHER INFORMATION: Written comments or suggestions on the scope of the EIS, requests to speak at the scoping meetings, or questions concerning the SIS project should be directed to: Mr. Carl P. Gertz, SIS Project Manager, Idaho Operations Office, U.S. Department of Energy, 785 DOE Place, Idaho Falls, ID 83402, telephone (208) 526–0306. For general information on the DOE EIS process, please contact the Office of the Assistant Secretary for Environment, Safety and Health, U.S. Department of Energy, Attention: Ms. Carol M. Borgstrom (EH–25), Room 3G–092, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–4600.

Scoping

I. Previous Notice Of Intent

The DOE published a Notice Of Intent on October 31, 1986, (51 FR 39785–3986) regarding the preparation of an EIS for the proposed SIS facility.

II. Background for the Proposed Project

Background information, a description of the proposed action, and an identification of environmental issues and alternatives to be considered are contained in the previously published Notice of Intent. In addition, an information packet will be available at the time of each meeting and may be requested in advance by contacting Mr. Carl P. Gertz, U.S. Department of Energy (address given above).

III. Comments and Scoping

Several of the written comments received in response to the previously published Notice of Intent have included requests for public scoping meetings for the EIS on the SIS Project. In response to these requests and in accordance with the National Environmental Policy Act (NEPA), as implemented by the Council on Enivornmental Quality Regulations (40 CFR Part 1500 *et seq.*), the DOE will conduct public scoping meetings to assist DOE in determining the appropriate scope of the EIS and the significant environmental issues to be addressed. The Department is also extending the written comment period to March 2, 1987. Written comments received during this period will be considered in preparing the EIS.

Two public scoping meetings will be held on the following dates, at the following locations and times: February 24, 1987, in Idaho Falls, Idaho, at University Place, 1776 Science Center Drive, commencing at 7:00 p.m.; on February 26, 1987, in Boise, Idaho, at the Red Lion Inn-Riverside, commencing at 7:00 p.m.

IV. Written Comment Procedures

Interested agencies, organizations, and members of the general public who desire to submit written comments or suggestions for consideration in connection with the preparation of this EIS are invited to do so in order to assist the DOE in identifying significant environmental issues and the appropriate scope of the EIS. Any written comments received will be given equal weight with oral comments presented at the scoping meetings. Written comments or suggestions on the scope of the EIS should be sent to Mr. Carl P. Gertz (address given above), and should be postmarked by March 2, 1987, to assure consideration.

V. Public Meeting Participation Procedure

Those parties interested in making oral comments or suggestions for consideration in connection with the preparation of this EIS are invited to do so by attending the public scoping meetings cited above. Intentions to present oral testimony should be received by Mr. Carl P. Gertz (address given above) by February 17, 1987.

The public scoping meetings will be held at the times and locations and on the dates specified above. The DOE will designate a presiding officer to chair these meetings. These meetings will be conducted as formal hearings. All interested individuals will be afforded an opportunity to speak. There will be no cross-examination of persons presenting statements. The presiding officer may ask questions of persons presenting statements, if needed for clarification, to assure that DOE understands the comments or suggestions made. The presiding officer will establish the order of speakers and provide any additional procedures necessary for the conduct of the meeting. As time permits, speakers will be allowed about five minutes for their oral statements and are requested to provide a brief written summary of their oral presentation. Speakers who desire

additional time to speak or who wish to provide further information for the record should be sure to submit such a request or information along with their notice of intent to speak. Individuals who do not make an advance arrangement to speak may register to speak at the time of each meeting. After all scheduled speakers have been given an opportunity to make their presentation, an opportunity will be provided to these registrants to speak.

A transcript of these scoping meetings will be prepared at the time of each meeting and the entire record of the meetings, including the transcript together with other information pertaining to the SIS Project will be retained by the DOE and made available for inspection at the DOE-Idaho public reading room located at the INEL Technical Library, University Place, 1776 Science Center Drive, Idaho Falls, ID 83415, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Additional copies of the complete transcript will also be available for a fee. In addition, anyone may make arrangements with Brent Jacobsen at the INEL Technical Library (address given above), telephone (208) 526–1144, to purchase a copy of the transcripts.

Issued in Washington, DC, February 2, 1987.

Mary L. Walker,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 87–2635 Filed 2–6–87; 8:45 am]

BILLING CODE 6450–01–M

Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; Civil Australia

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Australia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/EU(AU)–5, for the transfer of 18.286 kilograms of uranium, containing 16.923 kilograms of uranium-235 (92.546 percent enrichment) from the Australian Atomic Energy Commission to the United Kingdom Atomic Energy Authority, for fabrication of fuel elements (60 percent enrichment) for the HIFAR research reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: February 2, 1987.

For the Department of Energy.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87–2590 Filed 2–6–87; 8:45 am]

BILLING CODE 6450–01–M

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; Germany

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the loan of 200 micrograms of plutonium-242 to the European Institute for Transuranium Elements, Karlsruhe, the Federal Republic of Germany, for collaborative experiments. The material is to be returned to the United States upon conclusion of the experiments. Contract No. WC–EU–244 has been assigned to this proposed subsequent arrangement.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after this date of publication of this notice.

Dated: February 2, 1987.

For the Department of Energy.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87–2591 Filed 2–6–87; 8:45 am]

BILLING CODE 6450–01–M

Atomic Energy Agreements; Proposed Subsequent Arrangement With European Atomic Energy Community; Correction

In a document published on page 45512 in the **Federal Register** of Friday, December 19, 1986, the following correction should be made:

In the fourth line of the second paragraph of the document the "4 kilograms" should read "approximately 20 kilograms".

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

February 2, 1987.

[FR Doc. 87–2592 Filed 2–6–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Proposed Consent Order With Agway, Inc., Agway Petroleum Corp., and Texas City Refining, Inc.

AGENCY: Department of Energy (DOE).

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) hereby gives the notice required by 10 CFR 205.199J that it has entered into a Consent Order with Agway, Inc., Agway Petroleum Corporation, and Texas City Refining, Inc., ("Agway"). The Consent Order proposes to resolve matters relating to Agway's compliance with the federal petroleum price and allocation regulations for the period January 1, 1973, through January 27, 1981. To remedy any violations that may have occurred during the period, Agway has agreed to make three payments totalling $1 million plus interest from the date of execution of the Consent Order. The settlement reflects the negotiated compromises present in every settlement, including assessments of litigation risks in the significant areas of dispute between ERA and Agway.

ERA will petition the Office of Hearings and Appeals (OHA) to implement a Special Refund Proceeding pursuant to 10 CFR Part 205, Subpart V

to distribute the $1 million payment plus interest. In that proceeding, any person who claims to have suffered injury from Agway's alleged overcharges would have the opportunity to submit a claim to OHA.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for a period of thirty (30) days following publication of this Notice.

ERA will consider the comments, information and recommendations received from the public in finally evaluating the proposed settlement. This will result in one of the following courses of action: Rejection of the settlement; acceptance of the settlement and issuance of a final Order; or renegotiation of the agreement and, if successful, issuance of the modified agreement as a final Order. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant written comments, as well as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT: Emily Sommers, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6727.

SUPPLEMENTARY INFORMATION:

I. Introduction

Agway is a petroleum refiner subject to the jurisdiction of the ERA to determine compliance with the federal petroleum price and allocation regulations. As determined by Interpretation 77–6,[1] Agway, Inc., an agricultural cooperative whose common stock is owned by over 100,000 farmer-members, owned during the period covered by this Consent Order all the capital stock of Agway Petroleum Corporation ("Agway Petroleum") which in turn owned two-thirds of the capital stock of Texas City Refining, Inc. ("TCR"). The remaining one-third of TCR's capital stock is owned by Southern States Cooperative, Incorporated, an agricultural cooperative. At the time of the Interpretation, TCR sold 60% of the refined petroleum products it produced to Agway Petroleum, which constituted 93% of Agway Petroleum's requirements. Agway Petroleum then resold these products to member-owners of Agway and others. On the basis of these interrelationships, Interpretation 77–6 found that Agway, Agway Petroleum and TCR constituted a single firm for purposes of the federal petroleum price and allocation regulations.

ERA conducted an audit of Agway's compliance with the Federal price and allocation regulations, which were terminated on January 28, 1981 (Executive Order 12287). During this audit, ERA identified areas in the pricing and sales of refined petroleum products in which it believes that Agway failed to comply with the requirements of the federal price and allocation regulations. A number of issues arose in which ERA disagreed with Agway's calculation of the maximum lawful prices it could charge for refined products.

ERA preliminarily determined that for the issues covered by this proposed settlement, Agway may be liable for a maximum potential liability of $13.7 million in overcharges (excluding interest) in its sales to all of its categories of customers, including its substantial sales to its member-owners. ERA has preliminarily agreed to the settlement amount after examining the nature of TCR's sales and Agway Petroleum's sales, assessing the litigation risks associated with establishing the alleged overcharges, and considering the factual veracity and appropriate settlement compromises related to the many various issues.

The settlement calls for Agway to pay $1 million (plus interest from the date of execution by DOE) to discharge in full its obligations under the price and allocation regulations, except for those matters excluded from the agreement. Under the terms of the proposed Consent Order, the ERA would petition the OHA to implement a Special Refund Proceeding pursuant to 10 CFR Part 205, Subpart V.

II. Resolution of Issues

In the negotiation process which led to this proposed settlement, ERA analyzed the results of the audit, the nature of the alleged regulatory violations, and the "banks" of costs that Agway was entitled to recover in previous months but did not. ERA also considered the extent to which these banks were available to offset alleged cost and recovery violations and thus prevent the occurrence of overcharges on refined products. Finally, ERA examined Agway's corporate and cooperative structure, the extent of Agway's sales to its cooperative members, and the effect these had on possible overcharges.

Initially ERA identified $122 million in cost and recovery issues.[2] Following those original allegations, the cooperative gave ERA information concerning those cost and recovery claims which resulted in certain issues being dropped, either because DOE was satisfied there was no violation or because the issue had no impact on possible overcharges. As a result, the remaining issues total $77 million in overstated costs and/or understated recoveries. The issues concern cost reallocations, crude oil cost increases, purchased product cost increases, non-product cost increases and cost recoveries.

ERA determined that if it were successful on all of the issues, Agway could be liable for $13.7 million (plus interest on that amount) in its sales of refined products to all of its customers, including transfers of product to the equity owners of Agway and/or TCR.[3]

III. Determination of Reasonable Settlement Amount

In determining a reasonable settlement amount, ERA considered the $13.7 million in possible overcharges initially calculated, and the percentage of Agway's sales from 1973–1981 which were made to unrelated entities[4] who may have been harmed by Agway's pricing practices. On a proportionate basis, ERA determined that the maximum amount of overcharges to outsiders was $3.15 million plus interest.

In determining a reasonable settlement, ERA reviewed Agway's maximum overcharge determinations,

---

[1] Interpretation 77–6 was issued by the Federal Energy Administration on February 25, 1977, 5 F.E.G. ¶ 56,316, and was upheld in a decision by the Office of Exceptions and Appeals (now the Office of Hearings and Appeals) on August 3, 1977, 6 FEA ¶ 80,532.

[2] On January 9, 1981, ERA issued five Notices of Probable Violation (NOPV) to Agway alleging the following:

NOPV Case No.: RTYE00101—$33,000,000 in crude oil cost issues alleged.

NOPV Case No.: RTYK00101—$54,254,419 in purchased product issues.

NOPV Case No.: RTYL01401—$18,783,037 in non-product cost issues.

NOPV Case No.: RTYM00101—$16,254,421 in recoveries issues.

NOPV Case No.: RTYB00101—Unquantified class of purchaser issues.

[3] The possible overcharges would have occurred primarily in sales and transfers of general refinery products during certain months prior to February 1976.

[4] As discussed above, because two-thirds of TCR's stock was owned by Agway, Inc. which owns Agway Petroleum Corporation and one-third of TCR's stock was owned by Southern States Cooperative, TCR's sales to these entities, as well as Agway Petroleum's sales to the 100,000 farm cooperative members have resulted in no legal overchar9es inasmuch as such "purchasers" were equity owners of TCR and/or Agway.

particularly considering the $3.15 million attributable to sales to outside entities. ERA also considered the fact that its assessments were based on audit samples, estimates, projections and extrapolations and represents the estimated maximum recovery, excluding interest, that could result if all regulatory issues resolved by this settlement were adjudicated in ERA's favor and a maximum allowable price calculation was done on the basis of those issues. Those facts, as well as the risks inherent in litigation, were considered by ERA in its preliminary determination that Agway's agreement to pay $1 million for alleged regulatory violations in its sales to outside customers constitutes a reasonable resolution of these matters and is in the public interest.

IV. Terms and Conditions of the Consent Order

Within thirty days of the effective date of the Consent Order or March 1, 1987, whichever is later, Agway will make a first payment to DOE of $300,000 including accrued interest on the entire $1 million principal. Within 120 days of the first payment, Agway will make a second payment to DOE of $400,000 including accrued interest on the remaining principal. Within 120 days of the second payment, Agway will pay to DOE the remaining principal plus accrued interest on the remaining principal.

If the settlement is not made final by May 12, 1987, Agway may withdraw from the proposed agreement. If the Consent Order is made final, ERA will petition OHA to implement a Special Refund Proceeding under the provisions of Subpart V of the regulations. In the proceeding, OHA will develop procedures for the receipt and evaluation of applications for refund in order to distribute the refund amount. To ensure that OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that Agway provide necessary information to OHA.

Unless specifically excluded, Agway and DOE mutually release each other from claims and actions arising under the subject matter covered by the proposed Consent Order. The proposed Order does not affect the right of any other party to take action against Agway, or of Agway or the DOE to take action against any other party.

Two matters are excluded from the settlement. The proposed Order does not resolve:

(a) Agway's rights in all regards concerning claims under 10 CFR Part 205, Subpart V or its claims arising from violations or settlements of alleged violations of the Federal petroleum price and allocation regulations by third parties; and

(b) Agway's rights in all regards under the terms of the Final Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan.).

Finally, this agreement only resolves certain civil liabilities and makes no attempt to resolve any criminal liability that might be established by the government against Agway.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part. Interested parties are invited to submit written comments concerning this proposed Consent Order to: Agway Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. All comments received by the thirtieth day following publication of this Notice in the **Federal Register** will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register.**

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington, DC, on January 28, 1987.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[Case No. RTYA00001]

Consent Order With Agway, Inc., Agway Petroleum Corporation, and Texas City Refining, Inc.

I. Introduction

101. This Consent Order is entered into between Agway, Inc., Agway Petroleum Corporation, and Texas City Refining, Inc. (hereinafter collectively referred to as "TCR") and the United States Department of Energy ("DOE"). Except as specifically excluded herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes whether or not heretofore raised or asserted, between the DOE, as hereinafter defined, and TCR, as hereinafter defined, relating to TCR's compliance with the Federal petroleum price and allocation regulations, as hereinafter defined, during the period January 1, 1973 through January 27, 1981 (all the matters settled and resolved by this Consent Order are referred to hereafter as "the matters covered by this Consent Order").

II. Jurisdiction, Regulatory Authority, and Definitions

201

This Consent Order is entered into by DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193; Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202

The Economic Regulatory Administration ("ERA") was created by Section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation No. 0204–4, the Secretary of Energy delegated responsibility for the administration of the Federal petroleum price and allocation regulations to the Administrator of the ERA. In Delegation No. 0204–4A, the Administrator delegated to the Special Counsel authority to audit the compliance of refiners, including TCR, with the Federal petroleum price and allocation regulations and to take appropriate enforcement actions based upon such audits.

203

For purposes of this Consent Order:

(a) "DOE" includes the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Department of Energy, the Office of Special Counsel ("OSC"), the Economic Regulatory Administration, and all predecessor and successor agencies.

(b) "Federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations regarding the pricing and allocation of crude oil and refined petroleum products, natural gas liquids, and natural gas liquid products, including the entitlements and mandatory oil import programs, administered by DOE. The Federal petroleum Price and allocation regulations include (without limitation) the pricing. allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the

Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974; Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and in 10 CFR Parts 205, 210, 211, 212 and 213; and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, subpoenas, relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J, and the definitions under the Federal petroleum price and allocation regulations, shall apply to this Consent Order, except to the extent inconsistent herewith.

(c) "TCR" includes (without limitation) Agway, Inc., Agway Petroleum Corporation, Texas City Refining, Inc., TCR Inc. (formerly Rebel Oil Company) as well as their subsidiaries and affiliates and Predecessors, but only for the acts of such companies while they were subsidiaries or affiliates of TCR, TCR's petroleum-related activities as refiner, producer, operator, working interest or royalty interest owner, reseller, retailer, natural gas processor or otherwise, and, except for Part IV, *infra*, the officers, directors, and employees of such entities.

As set forth in an Interpretation of the General Counsel of the Federal Energy Administration issued February 25, 1977. Interpretation 77–6, 5 F.E.G. ¶ 56,316, upheld in a decision by the Office of Exceptions and Appeals (now the Office of Hearings and Appeals) on August 3, 1977, 6 FEA ¶ 80,532, Agway Inc. ("Agway"), an agricultural cooperative whose common voting stock is owned by over 100,000 farmer-members, owned during the period covered by this Consent Order all the capital stock of Agway Petroleum Corporation ("Agway Petroleum"), which in turn owns two-thirds of the capital stock of Texas City Refining, Inc. ("TCR"). The remaining one-third of TCR's capital stock is owned by Southern States Cooperative, Incorporated, an agricultural cooperative. At the time of the Exceptions and Appeals' decision, TCR sold 60% of the refined petroleum products it produced to Agway Petroleum, which constituted 93% of Agway Petroleum's requirements. Agway Petroleum then resold these products to member-owners of Agway and others. On the basis of these interrelationships, the Federal Energy Administration found that Agway, Agway Petroleum and TCR constituted a single firm for purposes of the Federal petroleum price and allocation regulations.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301

During the period covered by this Consent Order, TCR was a "refiner" and a "producer" of crude oil as those terms are defined in the Federal petroleum price and allocation regulations, and was subject to the jurisdiction of the DOE. During the period covered by this Consent Order, TCR engaged in, among other things, the production, refining, processing, reselling, and marketing of crude oil, gasoline, distillates, propane and other refined petroleum products.

302

DOE has conducted an audit to determine TCR's compliance with the Federal petroleum price and allocation regulations. TCR cooperated fully with the audit. TCR made its books, records, and other requested information available to DOE's auditors, attorneys and other personnel, who examined and reviewed a substantial volume of such materials. DOE found no evidence that TCR committed any willful or intentional violations of the Federal petroleum price and allocation regulations during the period covered by this Consent Order.

303

During the course of its audit, DOE raised certain issues with respect to TCR's application of the Federal petroleum price and allocation regulations and took various formal and informal administrative actions, including, among others, the issuance of letters and Notices of Probable Violations ("NOPVs"). TCR maintains, however, that it has calculated its costs, determined its prices, sold its crude oil and petroleum products, and operated in all other respects in accordance with the Federal petroleum price and allocation regulations.

304

DOE and TCR disagree in several respects concerning the proper application of the Federal petroleum price and allocation regulations to TCR's activities during the period covered by this Consent Order, and each believes that its respective legal and factual positions on the matters resolved by this Consent Order are meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the negotiation process. However, in order to avoid the expense of protracted, complex litigation and disruption of its orderly business functions, TCR has agreed to enter into this Consent Order. DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

Terms and Conditions

IV. Remedial Provisions

401

In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which might have been sought by the DOE against TCR for such matters under 10 CFR 205.199I or otherwise, TCR shall pay one million dollars ($1,000,000), plus interest accruing at the rates specified in paragraphs 404 and 405 between the date of execution of this Consent Order and the date of each payment, pursuant to paragraph 403, to be disbursed as provided in paragraph 402.

402

OSC and TCR agree that OSC will petition DOE's Office of Hearings and Appeals (OHA) to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V to distribute the amount specified in paragraph 403.

403

TCR agrees to pay the one million dollars ($1,000,000) plus interest to DOE as follows:

a. Within 30 days of the effective date of the Consent Order or March 1, 1987, whichever is later, TCR will make a first payment to DOE of $300,000 including accrued interest on the entire principal computed in accordance with paragraphs 404 and 406.

b. Within 120 days of the first payment, TCR will make a second payment to DOE of $400,000 including accrued interest on the remaining principal computed in accordance with paragraphs 405 and 406.

c. Within 120 days of the second payment, TCR will pay to DOE the remaining principal plus accrued interest on the remaining principal computed in accordance with Paragraphs 405 and 406.

404

Interest shall be earned on the principal amount of $1 million from the date of execution of this Consent Order through the date of first payment at an initial interest rate equal to the annual coupon equivalent for the average price bid at the most recent auction of 13-week U.S. Treasury Bills preceding said date of execution. Thereafter and through the date of first payment, the

interest rate shall be periodically adjusted to the level of the annual coupon equivalent for the average price bid at the auction of 13-week Treasury Bills next following the first day of each calendar quarter, beginning with the calendar quarter next following said date of execution. The adjusted interest rate will apply on the first day after said auction and will continue to apply until and including the day of the next such auction following the first day of the next calendar quarter or until payment, whichever is earlier. Interest shall be deemed earned each day as of 2:00 p.m. Eastern Time at 1/365th of the rate then in force and shall be compounded as of the first date of each calendar quarter upon which the rate is adjusted.

405

Interest on the amount remaining after the first payment shall be computed from the day after the first payment through the date of each subsequent payment at the annual rate of 7.50%. Interest shall be deemed earned each day as of 2:00 p.m. Eastern Time at 1/365th of the rate then in force and shall be compounded quarterly.

406

In the attribution of payments made pursuant to paragraph 403, interest shall be deemed earned before reduction of principal.

V. Issues Resolved

501

All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by the DOE against TCR regarding TCR's compliance with and obligations under the Federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Proposed Remedial Order, Remedial Order, action in court or otherwise, are resolved and extinguished as to TCR by this Consent Order, except that this Consent Order does not cover or affect:

(a) TCR's rights in all regards concerning claims under 10 CFR Part 205, Subpart V, or its claims arising from violations or settlements of alleged violations of the Federal petroleum price and allocation regulations by third parties; and

(b) TCR's rights in all regards under the terms of the Final Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation,* MDL No. 378 (D. Kan.).

502

(a) Except as otherwise provided herein, compliance by TCR with this Consent Order shall be deemed by the DOE to constitute full compliance for administrative and civil purposes with all Federal petroleum price and allocation regulations for matters covered by this Consent Order. In consideration for performance as required under this Consent Order by TCR, except as to those matters excluded by paragraph 501, the DOE hereby releases TCR completely and for all purposes from all administrative and civil judicial claims, demands, liabilities or causes of action, including without limitation claims for civil penalties, that the DOE has asserted or may otherwise be able to assert against TCR before or after the date of this Consent Order, for alleged violations of the Federal petroleum price and allocation regulations with respect to matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil matter against TCR or cause or refer any such matter to be initiated or prosecuted, nor will the DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil matter against TCR or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or civil judicial proceeding that TCR has violated the Federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order, or otherwise take action with respect to TCR in derogation of this Consent Order.

(b) Nothing contained herein shall preclude the DOE from defending the validity of the Federal petroleum price and allocation regulations. The DOE also reserves the right to initiate and prosecute enforcement actions against any party other than TCR for non-compliance with the Federal petroleum price and allocation regulations, including, for example, suits against operators for overcharges for crude oil when TCR is a working interest or royalty interest owner in such crude oil production. However, if TCR was the operator of a property that produced crude oil for all or part of the period covered by this Consent Order, the DOE shall not initiate or prosecute any enforcement action against any party for non-compliance with the Federal petroleum price and allocation regulations during such period relative to such property, except to the extent such party received its interest from such property in kind. TCR and the DOE agree that the amount paid to the DOE pursuant to this Consent Order is not attributable to TCR's activities as a working interest or royalty interest owner on properties on which it is not the operator. Furthermore, TCR and the DOE agree that the Consent Order and the payments hereunder do not resolve, reduce or release the liability of any other party for violations on properties of which (but only for the times during which) TCR is or was a working interest or royalty interest owner (and not the operator) or affect any rights or obligations between TCR and such working interest or royalty interest owners. Except for the matters excluded by this paragraph and paragraph 501, the DOE agrees that this Consent Order settles and finally resolves all aspects of TCR's liability to the DOE under the Federal petroleum price and allocation regulations in its capacity as a producer, including but not limited to its capacity as an operator or working interest or royalty interest owner of a crude oil producing property.

(c) Nothing contained herein may be construed as a bar, an estoppel, or a defense against any criminal action, or against any civil action brought by any purchaser of covered products from TCR, or against any civil action brought by an agency of the United States other than by the DOE under (i) section 210 of the Economic Stabilization Act or (ii) any statute or regulations other than the Federal petroleum price and allocation regulations. However, the DOE expressly agrees that it will not seek or recommend any criminal fines or penalties based solely on the information and evidence presently in its possession for the matters covered by this Consent Order; provided that nothing in the Consent Order precludes the DOE from exercising its obligations under law with regard to forwarding information of possible criminal violations of law to the appropriate authorities. Finally, except as herein specifically provided, this Consent Order does not affect or prejudice any private action brought by a third party against TCR, or by TCR against any third parties, including an action for contribution; nor may this Consent Order be used to establish, enlarge, or abridge the rights of third parties seeking contribution from TCR, or the rights of TCR to seek contribution from third parties. Nothing herein shall preclude TCR from asserting any legal or factual position or argument in any action brought against TCR by any third party under section 210 of the Economic Stabilization Act, the Federal petroleum

price and allocation regulations or any other statute, rule, regulation or order.

(d) TCR expressly agrees that in consideration for the DOE's performance under the Consent Order, TCR releases the DOE completely and for all purposes from all administrative and civil judicial claims, liabilities or causes of action that TCR has asserted or may otherwise be able to assert against the DOE under the Federal petroleum price and allocation regulations, except for matters specifically excluded from this Consent Order. This release, however, does not preclude TCR from asserting any factual or legal position or argument as a defense against any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States.

503

Execution of this Consent Order constitutes neither an admission by TCR nor a finding by the DOE of any violation by TCR of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE expressly agrees that it will not seek any such civil penalties. None of the payments or expenditures made by TCR pursuant to this Consent Order are to be considered for any purpose as penalties, fines, or forfeitures or as settlement of any potential liability for penalties, fines or forfeitures. Payments made by TCR pursuant to this Consent Order are attributable only to the matters resolved by this Consent Order which do not include any willful violation of Federal petroleum price and allocation regulations.

504

Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by TCR, but only if TCR has concealed facts relating to such violations. The DOE and TCR also reserve the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of fact material to this Consent Order during the course of the audit or the negotiations that preceded this Consent Order.

VI. Reporting, Recordkeeping Requirements and Confidentiality

601

TCR shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in the distribution of the monies paid pursuant to paragraph 402, TCR shall also maintain sales volume data and customers' names and addresses regarding its initial sales of crude oil and refined petroleum products for the transactions covered by this Consent Order until one year after the date ERA's Subpart V petition is filed with OHA. ERA shall file its Subpart V petition with OHA within 45 days after the date upon which TCR makes full and final payment pursuant to paragraph 403. If requested, TCR shall make such information available to DOE. Except as otherwise provided in this paragraph, upon completion of payment to DOE of the amount set forth in paragraph 403 of this Consent Order, TCR is relieved of its obligation to comply with the recordkeeping requirements of the Federal petroleum price and allocation regulations relating to the matters settled by this Consent Order. Except for formal requests for information regarding other firms subject to DOE's information gathering and reporting authority, TCR will not be subject to any audit requests, report orders, subpoenas, or other administrative discovery by DOE relating to TCR's compliance with the Federal petroleum price and allocation regulations relating to the matters settled by this Consent Order for the period covered by this Consent Order; provided, however, that TCR will not invoke this Consent Order as a defense to report orders, subpoenas and other administrative discovery it may receive regarding other firms subject to DOE's information gathering and reporting authority.

602

The DOE will treat the sensitive commercial and financial information provided by TCR pursuant to negotiations which were conducted with respect to the settlement agreed to in this Consent Order or obtained by DOE in its audit of TCR and related to matters covered by this Consent Order as confidential and proprietary and will not disclose such information unless required to do so by law, including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, the DOE will claim any privilege or exemption reasonably available to it. The DOE will provide TCR with ten (10) days actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of TCR's compliance with the federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information by the terms of this Consent Order, the DOE will make such information available to the Department of Justice ("DOJ") in response to a request pursuant to the DOJ's statutory authority by a duly authorized representative of the DOJ. If requested by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right TCR may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701

It is the understanding and express intention of TCR and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, TCR and the DOE each reserves the right to institute a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. Consistent with its Departmental policy, the DOE will undertake the defense of the Consent Order as finalized, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. TCR agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801

Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7139, and 10 CFR 205.199B. TCR hereby waives its right to administrative or judicial review of this Order, but TCR

reserves the right to participate in any such review initiated by a third party.

IX. Effective Date

901

This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments to DOE. The DOE will consider all written comments to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order or to attempt to renegotiate the terms of the Consent Order.

902

Until the effective date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to TCR, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred twentieth (120th) day following execution by TCR, TCR reserves the right, at any time thereafter until the effective date, to withdraw its agreement to this Consent Order by written notice to the DOE in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Agway, Inc., Agway Petroleum Corporation, and Texas City Refining, Inc. hereby agree to and accept on behalf of Agway, Inc., Agway Petroleum Corporation and Texas City Refining, Inc. the foregoing Consent Order.

Joseph L. Stratman,

Senior Vice President, Texas City Refining, Inc.

Dated: January 12, 1987.

I, the undersigned, a duly authorized representative of the Department of Energy, hereby agree to and accept on behalf of the Department of Energy the foregoing Consent Order.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

Dated: January 5, 1987.

[FR Doc. 87-2589 Filed 2-6-87; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order; the Crude Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed remedial order to: the Crude Company.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to The Crude Company; 701 W. Antler, Box 1968; Casper, Wyoming 82602; ATTN: John A. Masek, President. This Proposed Remedial Order alleges pricing violations in the amount of $8,993,470 plus interest in connection with the purchase and resale of crude oil during the period April 1974 through December 1980. The impact of the alleged violation is nationwide.

A copy of the Proposed Remedial Order may be obtained from the Office of Freedom of Information Reading Room; U.S. Department of Energy; Forrestal Building; 1000 Independence Avenue, SW.; Room 1E-190; Washington, DC 20585. Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals; U.S. Department of Energy; Forrestal Building, Room 6F078; 1000 Independence Ave., SW.; Washington, DC 20585, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 9th day of January 1987.

Ben Lemos,

Director, Office of Field Operations, Economic Regulatory Administration.

[FR Doc. 87-2593 Filed 2-6-87; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-59-NG]

Forest Marketing Corp.; Order Approving Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order approving blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to Forest Marketing Corporation (FMC) to import Canadian natural gas on a short-term basis. The order issued in ERA Docket No. 86-59-NG authorizes FMC to import up to 100 Bcf of Canadian natural gas during a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 30, 1987.

Robert L. Davies,

Director, Office of Fuels Program, Economic Regulatory Administration.

[FR Doc. 87-2594 Filed 2-6-87; 8:45 am]

BILLING CODE 6450-01-M

Final Consent Order With Murphy Oil Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on proposed consent order.

SUMMARY: The Administrator of the Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Murphy Oil Corporation (Murphy) shall be made final as proposed. The Consent Order resolves, with certain exceptions, matters relating to Murphy's compliance with the Federal price and allocation regulations for the period January 1, 1973 to January 28, 1981. To resolve those matters, Murphy will pay the DOE seven million dollars, plus interest from the date the proposed Consent Order was executed. Persons claiming to have been harmed by Murphy's alleged overcharges will be able to present their claims for refunds in an administrative claims proceeding before the Office of Hearings and Appeals (OHA). The decision to make the Murphy Consent Order final was made after a full review of written comments from the public.

FOR FURTHER INFORMATION CONTACT: Emily E. Sommers, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586-8872.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comments Received
III. Analysis of Comment
IV. Decision

I. Introduction

On December 18, 1986, ERA issued a notice announcing a proposed Consent Order between DOE and Murphy which, with certain exceptions, would resolve matters relating to Murphy's compliance with Federal petroleum price and allocation regulations for the period January 1, 1973 to January 28, 1981. 51 FR 45385 (December 18, 1986). The proposed Consent Order, which requires

Murphy to pay DOE seven million dollars,[1] is for the settlement of Murphy's potential liability for $10.4 million in alleged overcharges including attributable interest. The December 18 notice provided in detail the basis for ERA's preliminary view that the settlement was favorable to the government and in the public interest. The **Federal Register** notice solicited written comments from the public relating to the adequacy of the terms and conditions of the settlement and whether the settlement should be made final.

II. Comments Received

ERA received one written comment. That comment was considered in making the decision as to whether the proposed Consent Order should be made final. The comment, which was submitted by the Attorneys General of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island and West Virginia, addressed the use of OHA Subpart V procedures to distribute the settlement monies, along with suggestions concerning the specific disposition of the Consent Order monies.

III. Analysis of Comment

The December 18 notice solicited written comments to enable the ERA to receive information from the public relevant to the decision whether the proposed Consent Order should be finalized as proposed, modified or rejected. To ensure public understanding of the basis for the proposed settlement, the December 18 notice provided detailed information regarding Murphy's overcharge liability and the considerations that went into the government's preliminary agreement with the proposed terms. This settlement information enabled the public to address more specifically the areas in which questions or concerns may have existed.

The Attorneys General of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island and West Virginia objected to the provision in the Consent Order that requires the DOE's Office of Special Counsel (OSC) to petition the OHA to implement special refund procedures under Subpart V (10 CFR Part 205) to distribute the settlement funds. These states expressed the view that use of the Subpart V procedures was unnecessary and that the Consent Order itself should direct refunds to the states, to be used in any energy-related programs or projects which would benefit all the states' citizens, when it is impossible to identify the victims of overcharges. As DOE has previously explained in, *inter alia*, the Exxon **Federal Register** Notice, 51 FR 36052 (October 8, 1986), in response to the same comment made by the Attorneys General for these states, the ERA believes as a general policy that the Subpart V procedures are best suited for cases such as Murphy, where ERA could not readily identify the injured parties or their relative amount of economic harm. This commenter may most appropriately present its claim for monies from the Consent Order fund and express its views concerning the use of these monies in that forum.

In the December 18 **Federal Register** notice, ERA sought to provide the maximum amount of information possible. That notice resulted in one comment, and ERA's review and analysis of the comment did not provide any information that would support the modification or rejection of the proposed Consent Order with Murphy. Accordingly, ERA concludes that the Consent Order is in the public interest and should be made final.

IV. Decision

By this notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between Murphy and DOE is made a final order of the Department of Energy, effective the date of publication of this notice in the **Federal Register.**

Issued in Washington, DC, on January 28, 1987.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 87-2595 Filed 2-6-87; 8:45 am]

BILLING CODE 6450-01-M

[1] The seven million dollars, plus interest accrued from the date the proposed Consent Order was executed, will be disbursed to DOE within 30 days of publication of this notice.

Federal Energy Regulatory Commission

[Project No. 6346-002]

Wawa, Inc.; Surrender of Exemption

February 3, 1987.

Take notice that the Wawa, Incorporated, Exemptee for the proposed Union Lake Hydro Project No. 6346, requested by letter dated January 13, 1987, that its exemption be terminated. The order granting exemption was issued on November 22, 1982. The project would have been located on Union Lake in Cumberland County, New Jersey. Exemptee has not started project construction.

The Exemptee filed the request on January 13, 1987, and the Exemption from Licensing for Project No. 6346, shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2639 Filed 2-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5605-002]

Woodbridge Irrigation District; Surrender of Exemption

February 3, 1987.

Take notice that Woodbridge Irrigation District (District), exemptee for the Woodbridge Dam Project No. 5605, has requested that its exemption be terminated. The project would have been located on the Mokelumne River in San Joaquin County, California. Construction on the project has not commenced.

The District filed the request on December 29, 1986, and the exemption for Project No. 5605 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2640 Filed 2-6-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-9-FRL-3153-1; EPA Project No. NV 83-01]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to White Pine Power

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice; correction.

SUMMARY: The Environmental Protection Agency is correcting the notice published in the **Federal Register** on October 29, 1986 (51 FR 39576)

concerning the PSD permit named above. The original notice stated in the **SUMMARY,** "Notice is hereby given that on August 6, 1986 the Environmental Protection Agency issued a PSD permit under EPA's Federal regulations 40 CFR 52.21 to the applicant named above." The correct date of permit issuance is August 6, 1985.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A–3–1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8240, FTS 454–8240.

SUPPLEMENTARY INFORMATION: The PSD permit grants approval to construct a 1500 MW coal-fired electric utility steam generating plant and associated facilities to be located approximately 48 miles north of Ely, Nevada. The permit is subject to certain conditions, including an allowable emission rate (for each of the two boilers) as follows: SO_2–0.19 lbs/10^6 Btu (30-day average) with at least 84% control efficiency and 1490 lbs/hr (24-hour average), CO–383 lbs/hr (30-day average), NO_x–0.55 lbs/10^6 Btu when firing bituminous coal or 0.45 lbs/10^6 Btu when firing sub-bituminous coal (30-day average), TSP–0.02 lbs/10^6 Btu or 160.9 lbs/hr, fluoride-24 lbs/hr, and mercury at 0.05 lbs/hr (.006 grams per second).

DATE: The PSD permit was issued to White Pine Power on August 6, 1985.

Dated: January 28, 1987.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 87–2632 Filed 2–6–87; 8:45 am]

BILLING CODE 6560–50–M

[SAB–FRL–3153–2]

Science Advisory Board; Environmental Effects, Transport and Fate Committee Surface Water Monitoring Subcommittee; Open Meeting

Under the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that a two-day meeting of the Surface Water Monitoring Subcommittee of the Science Advisory Board's Environmental Effects, Transport and Fate Committee will be held on February 23 and 24, 1987. The meeting will begin at 9:00 a.m. on February 23, in Conference Room 309 of the General Academy Building, on the corner of Avenues B and Mulberry, North Texas State University, Denton, Texas, and will adjourn on February 24, no later than 4:00 p.m.

The main purpose of the meeting is to independently review the scientific adequacy of the Surface Water Monitoring Study prepared by the Agency's Office of Water. The Subcommittee will discuss and assess the scientific basis for the objectives, findings and recommendations presented in the study. Copies of the Agency document to be reviewed may be obtained from Ms. Mary E. Blakeslee, U.S. Environmental Protection Agency, Office of Water (WH 556), 401 M Street, SW., Washington, DC 20460, (202) 382–7818.

The meeting will be open to the public. Any member of the public wishing to attend, present information to the subcommittee, or obtain information concerning the meeting, should contact Ms. Janis Kurtz, Executive Secretary, or Mrs. Lutithia Barbee, Staff Secretary, (A101–F) Environmental Effects, Transport and Fate Committee, Science Advisory Board, U.S. EPA, 401 M Street SW., Washington, DC 20460, Telephone: (202) 382–2552 or FTS 8–382–2552. Written comments will he accepted, and can be sent to Ms. Kurtz at the address above. Persons interested in making statements before the Subcommittee must contact Ms. Kurtz no later than January 19, 1987 in order to be assured of space on the agenda.

Dated: February 3, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87–2633 Filed 2–6–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59237A; FRL–3153–3]

Certain Chemical; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–87–6. The test marketing conditions are described below.

EFFECTIVE DATE: February 2, 1987.

FOR FURTHER INFORMATION CONTACT: Darlene Jones, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–608, 401 M Street, SW., Washington, DC 20460, (202–382–2279).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–87–6. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TML application, and for the time period and restriction specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the numbers of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–87–6. A bill of lading and Material Safety Data Sheet (MSDS) accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until 5 years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of dates of the shipments to the customers and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T–87–6

Date of Receipt: December 22, 1986.

Notice of Receipt: January 9, 1987 (52 FR 857).

Applicant: Confidential.

Chemical: (G) Alkyd Resin.

Use: (S) Architectural coatings.

Production Volume: Confidential.

Number of Customers: 2,275 Consumers; 850 Contractors.

Worker Exposure: Consumer use: Dermal and inhalation, 2,275 consumers. Contractor use: Dermal and inhalation, 5,100 workers.

Test Marketing Period: 180 Days.

Commencing on: February 2, 1987.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activities will not present any reasonable risk of injury to health or the environment.

Dated: February 2, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87-2634 Filed 2-6-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-786-DR]

Federated States of Micronesia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Federated States of Micronesia, (FEMA-786-DR), dated February 2, 1987, and related determinations.

DATED: February 2, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3616.

Notice: Notice is hereby given that, in a letter of February 2, 1987, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the Federated States of Micronesia resulting from Typhoon Orchid on January 10-11, 1987, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the Federated States of Micronesia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Tommie C. Hamner of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Federated States of Micronesia to have been affected adversely by this declared major disaster and are designated eligible as follows:

Ulithi Atoll and the Island of Fais for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director.

[FR Doc. 87-2625 Filed 2-6-87; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-006190-049
Title: United States Atlantic & Gulf/ Venezuela Freight Conference
Parties:
Compania Anonima Venezolana de Navigacion
Crowley Caribbean Transport, Inc.
United States Lines (S.A.) Inc.
Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No.: 202-010424-013
Title: United States Atlantic & Gulf/ Hispaniola Freight Association
Parties:
Crowley Caribbean Transport, Inc./ CTMT, Inc./Trailer Marine Transport Corporation (as one party)
Puerto Rico Maritime Shipping Authority
Sea-Land Service, Inc.
Shipping Corporation of Trinidad and Tobago, Ltd.
Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No.: 213-011059
Title: Crowley Caribbean Transport/ American Transport Lines Space Charter Agreement
Parties:
Crowley Caribbean Transport, Inc. (Crowley)
American Transport Lines, Inc. (ATL)
Synopsis: The proposed agreement would permit Crowley to charter space on ATL vessels operating in the trade between U.S. Atlantic and Gulf ports and ports in Venezuela. It would also permit the parties to interchange containers and related equipment and to agree on sailing schedules and ports of call. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: February 4, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87-2599 Filed 2-6-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Cheatham State Bank Employee Stock Ownership Plan, et. al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications

are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 27, 1987.

A. Federal Reserve Bank of Atlanta

(Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Cheatham State Bank Employee Stock Ownership Plan,* Kingston Springs, Tennessee; to become a bank holding company by acquiring 26.7 percent of the voting shares of CSB Financial Corporation, Ashland City, Tennessee, and thereby indirectly acquire Cheatham State Bank, Kingston Springs, Tennessee.

B. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Banks of Iowa, Inc.,* Des Moines, Iowa; to acquire 100 percent of the voting shares of Central Trust and Savings Bank, Eldridge, Iowa. Comments on this application must be received by February 24, 1987.

Board of Governors of the Federal Reserve System, February 3, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2587 Filed 2-6-87; 8:45 am]

BILLING CODE 6210-01-M

Lake Ariel Bankcorp, Inc., et. al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 2, 1987.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Lake Ariel Bankcorp, Inc.,* Lake Ariel, Pennsylvania; to engage *de novo* through its subsidiary, L. A. Lease, Inc., Lake Ariel, Pennsylvania, in the leasing of personal property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Society Corporation,* Cleveland, Ohio; to engage *de novo* through its subsidiary, Society Mortgage Company, Cleveland, Ohio, in the servicing of mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Amcore Financial, Inc.,* Rockford, Illinois; to engage *de novo* through its subsidiary, Amcore Mortgage, Inc., Rockford, Illinois, in the origination, acquisition, selling and servicing of residential and commercial mortgage loans on its own behalf and on the behalf of other mortgage companies and financial institutions pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by February 25, 1987.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. **Wells Fargo & Company,** San Francisco, California; to engage *de novo* through its subsidiary, Wells Fargo Investment Advisors, San Francisco, California, in providing investment advice on financial futures and options on futures pursuant to § 225.25(b)(19) of the Board's Regulation Y. Comments on this application must be received by February 27, 1987.

Board of Governors of the Federal Reserve System, February 3, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2588 Filed 2-6-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisitions of Shares of Banks or Bank Holding Companies; Samuel C. Johnson, et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(J)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 24, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690;

1. *Samuel C. Johnson as Trustee of the Heritage Financial Trust,* Racine, Wisconsin; Notificant proposes to exchange 21,908 class A shares of Heritage Racine Corporation, Racine, Wisconsin, With the H.F. Johnson personal trust for 21,908 shares of Class B shares of Heritage Racine Corporation.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Donald K. Wilder*, Oakland City, Indiana; to acquire 26.40 percent of the voting shares of Oakland City Bancshares Corp., Oakland City, Indiana.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *FLS Partnership*, Lenders Corporation, Scott M. Ferguson and James M. Shadlaus, all of San Diego, California; to acquire 15.28 percent of the voting shares of SDNB Financial Corp., San Diego, California.

Board of Governors of the Federal Reserve System, February 3, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2586 Filed 2-6-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87N-0035]

Merrell Dow Pharmaceuticals, Inc., et al; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) withdraws approval of 13 new drug applications (NDAs) based on the written request of the applicant.

EFFECTIVE DATE: March 11, 1987.

FOR FURTHER INFORMATION CONTACT: Ron Lyles, Center for Drugs and Biologics (HFN-46), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4320.

SUPPLEMENTARY INFORMATION: The holders of the NDAs listed below have informed FDA that these drug products are no longer marketed. They have requested that FDA withdraw approval of the NDAs and have waived their opportunity for hearing.

NDA	Drug name	Applicant's name and address
1-941	Diothane Ointment.	Merrell Dow Pharmaceuticals, Inc., 2110 E. Galbraith Rd., Cincinnati, OH 45215.
6-931	Syncurine Injection.	Burroughs Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
9-313	Romilar Expectorant.	Hoffmann-La Roache, Inc., Nutley, NJ 07110.
10-489	Harvamine Tablets.	The Purdue Frederick Co., 100 Connecticut Ave., Norwalk, CT 06856.
11-165	Romilar CF Syrup.	Hoffmann-La Roche, Inc.
11-845	Pharycidin Concentrate.	The Purdue Frederick Co.
12-509	Tegunor Medicated Ointment and Powder.	Do.
12-755	Chlorephrine Sustained Action Capsules.	USV Laboratories, 303 S. Broadway, Tarrytown, NY 10591.
12-779	Reactrol Tablets	The Purdue Frederick Co.
12-913	Metopirone Injection.	Ciba-Geigy, Summit, NJ 07901.
14-717	Afrin Nasal Spray and Solution.	Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033.
16-905	Ducon Concentrate Antacid Suspension.	Smith, Kline & French Laboratories, 1500 Spring Garden St., P.O. Box 7929, Philadelphia, PA 19101.
18-173	Fluidil Tablets	Adria Laboratories, Inc., P.O. Box 16529, Columbus, OH 43216.

The agency has determined that, in accordance with 21 CFR 25.24(c)(3) this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (section 505(e), 76 Stat. 782 amended (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drugs and Biologics (21 CFR 5.82), approval of the new drug applications listed above is hereby withdrawn.

This order becomes effective on March 11, 1987.

Dated: February 2, 1987.

Paul Parkman,

Acting Director, Office of Compliance, Center for Veterinary Medicine.

[FR Doc. 87-2597 Filed 2-6-87; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Toxicology Program: Notification of the Disposal of Wet Tissues From Toxicology and Carcinogenesis Studies Stored in the National Toxicology Program Archives

The National Toxicology Program (NTP) Archives currently maintains records and pathology materials for over 300 National Cancer Institue and NTP toxicology and carcinogenesis studies, some of which were started and completed more than 10 years ago. The storage space for the wet tissues (animal organs and carcasses in formalin) is no longer adequate and additional storage space would be required. Since these studies were completed years ago, and for most studies histological slides and paraffin blocks are available, we plan to discard the wet tissues from selected studies where it is anticipated that there is either little current interest or the tissues are considered no longer viable. The histological slides and paraffin blocks will remain available for these studies.

Attached is the second list of studies for which the wet tissues are to be discarded. (The first list was publised in the **Federal Register** on September 19, 1986, 51 FR 33303-33304.) The chemicals are from studies conducted at Littion Bionetics where the final sacrifices occurred between 1971 and 1976. Anyone who has questions about the studies listed should contact Dr. Gray A. Boorman, Project Officer for the NTP Archives, by telephone at (919) 541-3440, FTS 629-3440, or in writing at NIEHS, MD C2-01, P.O. Box 12233, Research Triangle Park, NC 27709.

If no objections are received by 30 days after publication of this notice, the formalin fixed wet tissues from these studies will be discarded.

Attachment:

Dated: January 9, 1987.

David P. Rall,

Director, National Toxicology Program.

List II

PROPOSED DISPOSAL OF WET TISSUES FOR TOXICOLOGY AND CARCINOGENISTS STUDIES

Exp. No. Chemical	Single dose study		14-day study		90-day study		2-year study	
	Start	end	start	end	start	end	start	end
C00384A 2-Acetylaminofluorene							03/15/69A	03/15/71A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00384B 2-Acetylaminofluorene							01/15/71A	03/15/75A

PROPOSED DISPOSAL OF WET TISSUES FOR TOXICOLOGY AND CARCINOGENISTS STUDIES—Continued

Exp. No. Chemical	Single dose study		14-day study		90-day study		2-year study	
	Start	end	start	end	start	end	start	end
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00384C 2-Acetylaminofluorene	09/00/70A		11/00/70A		12/00/70A	08/00/71A	09/00/71A	12/00/73A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00384D 2-Acetylaminofluorene	02/00/71A		04/00/71A		05/00/71A	10/00/71A	02/00/72A	04/00/73A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00384E 2-Acetylaminofluorene	05/00/71A		07/00/71A		08/00/71A	01/00/72A	05/00/72A	06/00/74A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00384F 2-Acetylaminofluorene	03/00/72A		05/00/72A		06/00/72A	11/00/72A	02/00/73A	03/00/75A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00384G 2-Acetylaminofluorene							03/15/73A	02/15/75A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00384H 2-Acetylaminofluorene	11/00/70A		01/00/71A		02/00/71A	08/00/71A	03/00/73A	03/00/75A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C03963 4-Amino-2-Nitrophenol	03/00/73A		05/00/73A		06/00/73A	12/00/73A	03/00/74A	04/00/76A
TR-094 P Under the conditions of the bioassay, 4-Amino-2-Nitrophenol was carcinogenic for male Fisher 344 rats, inducing transitional-cell carcinomas of the urinary bladder. The transitional-cell carcinomas of the urinary bladder observed in three dosed female rats may also have been associated with administration of the 4-Amino-2-Nitrophenol. The test chemical was not carcinogenic for male or female B6C3F1 mice at the doses tested.								
C00373A 3-Aminotriazole	10/00/70A		12/00/70A		01/00/71A	10/00/71A	10/00/71A	02/00/74A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00373B 3-Aminotriazole	09/00/71A		11/00/71A		12/00/71A	05/00/72A	09/00/72A	10/00/74A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00373C 3-Aminotriazole	08/00/71A		10/00/71A		11/00/71A	05/00/72A	08/00/72A	11/00/74A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00373D 3-Aminotriazole	11/00/71A		01/00/72A		02/00/72A	10/00/72A	11/00/72A	11/00/74A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00373E 3-Aminotriazole	11/00/71A		01/00/72A		02/00/72A	07/00/72A	11/00/72A	03/00/75A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C03805 Carbromal	05/00/72A		07/00/72A		08/00/72A	04/00/73A	05/00/73A	08/00/75A
TR-173 P Under the conditions of this bioassay, dietary administration of Carbromal was not carcinogenic in Fischer 344 rats or B6C3F1 mice.								
C03770 4-(Chloroacetyl)Acetanili	11/00/72A		01/00/73A		02/00/73A	10/00/73A	11/00/73A	02/00/76A
TR-177 P Under the conditions of this bioassay, 4'-(Chloroacetyl)-Acetanilide was not carcinogenic when administered in the diet to Fischer 344 rats or B6C3F1 mice of either sex.								
C03907 2-Chloromethylpyridine HY	11/00/72A		01/00/73A		02/00/73A	12/00/73A	11/00/73A	04/00/76A
TR-178 P Under the conditions of this bioassay, administration of 2-(Chloromethyl)-Pyridine Hydrochloride was not carcinogenic to Fischer 344 rats or B6C3F1 mice.								
C03838 3-Chloromethylpyridine HY	10/00/72A		12/00/72A		01/00/73A	07/00/73A	10/00/73A	11/00/75A
TR-095 P Under the conditions of this bioassay, 3-(Chloroacetyl)Pyridine Hydrochloridine was carcinogenic in male to Fischer 344 rats or B6C3F1 mice of both sexes, producing papillomas and carcinomas of the forestomach. Neoplastic lesions related to chemical administration were restricted to the site of topical application, the stomach.								
C02040 3-Chloro-P-Toulidine	07/00/71A		09/00/71A		10/00/71A	04/00/72A	07/00/72A	08/00/74A
TR-145 P Under the conditions of this bioassay, there were no convincing evidence for the carcinogenicity of 3-Chloro-P-Toluidine in Fischer 344 rats or B6C3F1 mice.								
C02051 5-Chloro-O-Toulidine	08/00/71A		10/00/71A		11/00/71A	08/00/72A	08/00/72A	12/00/74A
TR-187 P Under the conditions of this bioassay, 5-(Chlor-O-Touluidine was carcinogenic to B6C3F1 mice inducing hemangiosarcomas and hepatocellular carcinomas in both males and females. There was no conclusive evidence of the carcinogenicity of the compound in Fisher 344 rats.								
C02028 Dibutyltin Diacetate	06/00/72A		08/00/72A		09/00/72A	04/00/73A	06/00/73A	08/00/75A
TR-183 P Under the conditions of this bioassay, there was no conclusive evidence of the carcinogenicity of Dibutyltin Diacetate in male Fischer 344 rats or B6C3F1 mice of either sex. The loss of tissues taken from high dose female rats in this bioassay precluded an evaluation of the carcinogenicity of Dibutyltin Diacetate to female Fischer 344 rats.								
C03816 N,N'-Diethylthiourea	07/00/72A		09/00/72A		10/00/72A	05/00/73A	07/00/73A	11/00/75A
TR-149 P Under the conditions of this bioassay, N,N'-Diethylthiourea was carcinogenic to Fischer 344 rats, causing follicular-cell carcinomas of the thyroid in males and follicular-cell neoplasms of the thyroid in females. There was no evidence for the carcinogenicity of the compound in B6C3F1 mice.								
C02255 2,4-Diemthoxyaniline HYDR	01	00/73A		03/00/73A		04/00/74A	09/00/73A	01/00/74A
TR-171 P Under the conditions of this bioassay, there were no convincing evidence for the carcinogenicity of 2,4-Diemthoxyaniline HCL in Fischer 344 rats or B6C3F1 mice. Liver-hepatocellular carcinomas & adenoma-B6C3F1 mouse male								
C02175 3,3'-Dimethoxybenzidine-4	05/00/72A		07/00/72A		08/00/72A	01/00/73A	05/00/73A	06/00/75A
TR-128 P Under the conditions of this bioassay, 3,3'-Dimethoxybenzidine-4,4'-Diisocyanate was carcinogenic to Fischer 344 rats, causing neoplasms of the skin (excluding skin of the ear) in males, endometrial stomal polyps in females, and leukemia and malignant lymphoma in both sexes. The compound was also associated with the development of a combination of squamous-cell carcinomas and sebaceous adenocarcinomas of the Zymbal's gland and skin of the ear in rats of both sexes. There was no evidence for the carcinogenicity of the compound in B6C3F1 mice.								
C03974 Ethylenediamine Tetraacet	07/00/72A		09/00/72A		10/00/72A	04/00/73A	07/00/73A	08/00/75A
TR-011 P There was no evidence of the carcinogenicity of EDTA at the concentrations administered, and no tumors or lesions of the kidney or other organs were related to the treatment survival of all groups of animals of both species was good, thus, the lack of appearance of treatment-related tumors could not be attributed to early mortality. It should be noted that the confidence intervals for all tumors sites include a positive value, this indicates that the possibility of tumorigenicity is not theorectically precluded. However, under the conditions of this study, using concentrations of 3,500 ppm and 7,500 ppm in feed, NA3EDTA.3H20 was not demonstrated to be carcinogenic in rats or mice.								
C03861 Lithocholic acid	06/00/72A		08/00/72A		09/00/72A	05/00/73A	06/00/73A	10/00/75A
TR-175 P Under the conditions of this bioassay, Lithocholic acid was not carcinogenic when administered by gavage to Fischer 344 rats or B6C3F1 mice.								
C03792 Nithiazide	10/00/72A		12/00/72A		01/00/73A	11/00/73A	10/00/73A	03/00/76A
TR-146 P Under the conditions of this bioassay, Nithiazide was carcinogenic in male and probably female B6C3F1 mice, causing a combination of hepatocellular carcinomas and hepatocellular adenomas. Nithiazide was also carcinogenic in female Fischer 344 rats, causing an increased incidence of a combination of skin and mammary neoplasms. The compound was not carcinogenic in male Fischer 344 rats.								

PROPOSED DISPOSAL OF WET TISSUES FOR TOXICOLOGY AND CARCINOGENISTS STUDIES—Continued

Exp. No. Chemical	Single dose study		14-day study		90-day study		2-year study	
	Start	end	start	end	start	end	start	end
C02766 NTA(Nitrilotriacetic acid	02/00/72A		04/00/72A		05/00/72A	10/00/72A	02/00/73A	01/00/75A
TR-006 P NTA and NA3NTA H20 were shown to be carcinogenic to urinary tract of both rats and mice at higher doses tested. Lower doses, as delineated in this report, did not induce significant numbers of such lessions.								
C00420B Nitrofen	12/00/70A		02/00/71A		03/00/71A	12/00/71A	12/00/71A	01/00/74A
TR-026 P The results of this study indicate that Nitrofen is a liver carcinogen, causing hepatocellular carcinomas in B6C3F1 mice of both sexes and hemangiosarcoma of the liver in male mice. In addition, the compound is carcinogenic to female Osborne-Mendel rats, causing an increased incidence of pancreatic carcinomas. Survival of the high dose male rats was not adequate for meaningful statistical analysis of tumor incidence.								
C02222 2-Nitro-P-Phenylenediamin	08/00/71A		10/00/71A		11/00/71A	06/00/72A	08/00/72A	10/00/74A
TR-169 P Under the conditions of this bioassay, dietary administration of 2-Nitro-P-Phenylenediamine was carcinogenic to female B6C3F1 mice, causing an increased incidence of hepatocellular neoplasms, primarily hepatocellular adenomas. There was no convincing evidence for the carcinogenicity of the compound in Fischer 344 rats or in male B6C3F1 mice.								
C03941 4-Nitro-O-Phenylenediamin	10/00/72A		12/00/72A		01/00/73A	06/00/73A	10/00/73A	10/00/75A
TR-180 P Under the conditions of this bioassay, dietary administration of 4-Nitro-O-Phenylenediamine was not carcinogenic in Fischer 344 rats or B6C3F1 mice.								
C02211 Beta-Nitrostyrene	09/00/71A		11/00/71A		12/00/71A	10/00/72A	09/00/72A	09/00/75A
TR-170 P Under the conditions of this bioassay, there was no convincing evidence for the carinogenicity of a solution of B-Nitrostyrene and styrene if Fischer 344 rats or in B6C3F1 mice.								
C03930 P-Phenylenediamine Dihydr	02/00/72A		04/00/72A		05/00/72A	01/00/74A	02/00/73A	05/00/76A
TR-174 Under the conditions of this bioassay, there was no convincing evidence that dietary adminisration of P-Phenylenediamine Dihydrochloride was carcinogenic in Fischer 344 rats of B6C3F1 mice.								
C03952 1-Phenyl-3-Methyl-5-Pyraz	10/00/72A		12/00/72A		01/00/73A	08/00/73A	10/00/73A	12/00/75A
TR-141 P Under the conditions of this bioassay, there was no evidence for the carcinogenicity of 1-Phenyl-3-Methyl-5-Pyrazolone to Fischer 344 rats of B6C3F1 mice.								
C02233 N-Phenyl-P-Phenylenediami	11/00/71A		01/00/72A		02/00/72A	06/00/72A	11/00/72A	12/00/74A
TR-082 P It is concluded that under the conditions of this bioassay, N-Phenyl-P-Phenylenediamine was not carcinogenic for Fischer 344 rats or for B6C3F1 mice.								
C02017 1-Phenyl-2-Thiourea	09/00/71A		11/00/71A		12/00/71A	02/00/73A	09/00/72A	06/00/75A
TR-148 P Under the conditions of this bioassay, 1-Phenyl-2-Thiourea was not carcinogenic to Fischer 344 rats or B6C3F1 mice.								
C04126 Pivalolactone	08/00/72A		10/00/72A		11/00/72A	05/00/73A	08/00/73A	09/00/75A
TR-140 P Under the conditions of this bioassay, Pivalolactone was carcinogenic in male and female Fischer 344 rats, causing a significant increase in the combined inclidence of squamous-cell carcinomas and squamous-cell papillomas at the site of chemical administration, the forestomach. This study provided no evidence for the carcinogenicity of Pivalolactone in B6C3F1 mice of either sex.								
C03849 Sodium Iodomethanesulfona	06/00/72A		08/00/72A		09/00/72A	04/00/73A	06/00/73A	08/00/75A
TR-188 Withdrawn								
C03827 Succinic acid 2,2-DIMETHY	06//0//72A		08/00/72A		09/00/72A	03/00/73A	06/00/73A	07/00/75A
TR-083 P Under the conditions of this bioassay, Daminozide was not carcinogenic in the male Fischer 344 rats or in the female B6C3F1 mice. In male B6C3F1 mice, the induction of hepatocellular carcinomas may have been associated with the administration of the test chemical. Daminozide was carcinogenic in female Fischer 344 rats, inducing adenocarcinomas of the endometrium of the uterus and leiomyosarcomas of the uterus.								
C03781 Trimethylphosphate	10/00/72A		12/00/72A		01/00/73A	08/00/73A	10/00/73A	12/00/75A
TR-081 P Under the conditions of this bioassay, Trimethylphosphate was carcinogenic in female B6C3F1 mice, inducing adenocarcinomas of the uterus/endometrium. Trimethylophosphate was associated with the induction of benign fibromas of the subcutaneous tissue in male Fischer 344 rats. No evidence of carcinogenicity of the compound was obtained in female rats or in male mice.								
C02186 Trimethylthiourea	10/00/71A		12/00/71A		01/00/72A	06/00/72A	10/00/72A	10/00/74A
TR-129 P Under the conditions of this bioassay, dietary administration of Trimethylthiourea was caarcinogenic to female Fischer 344 rats, in ducing follicular-cell carcinomas of the thyroid. There was no sufficient evidence for the carcinoginicity of the compound in male Fischer 344 rats or in B6C3F1 mice of either sex.								
C00260 Triphenyltin Hydroxide	05/00/72A		07/00/72A		08/00/72A	01/00/73A	05/00/73A	11/00/75A
TR-139 PF Under the conditions of this bioassay, there was no evidence for the carcinogenicity of Triphenyltin Hydroxide to Fischer 344 rats or the B6C3F1 mice.								
C01445A Trisodium Nitrilotriaceta							06/15/72A	08/00/74A
TR-006 P NTA and NA3NTA.H20 were shown to be carcinogenic to the urinary tracts of both rats and mice at the higher doses tested. Lower doses, as delineated in this report, did not induce significant numbers of such lesions.								
C01445B Trisodium Nitrilotriaceta	02/00/72A		04/00/72A		05/00/72A	10/00/72A	02/00/73A	02/00/75A
TR-006 P NTA and NA3NTA.H20 were shown to be carcinogenic to the urinary tracts of both rats and mice at the higher doses tested. Lower doses, as delineated in this report, did not induce significant numbers of such lessions.								

[FR Doc. 87-1070 Filed 2-6-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Department's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Department Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340. Copies of the information collection and related documents may be obtained by calling the Department Clearance Officer at the number given below. This information collection was the subject of public review and comment for the proposed rule published on May 5, 1986, at 51 FR 16636.

Title: Natural Resource Damage Assessment Regulations, 43 CFR 11, Subpart D

Abstract: The information is being collected to perform a natural resource

damage assessment under Subpart D. The information will be used to complete the Assessment Plan for the Subpart D damage assessment. Respondents supply the information to obtain the benefit of the rebuttable presumption for assessments performed in accordance with the 43 CFR Part 11 regulations.

Bureau Form Number: None
Frequency: On occasion
Description of Respondents: Federal and State agencies acting on behalf of the public as trustees of natural resources.
Annual Responses: 1,075
Annual Burden Hours: 11,180
Department Clearance Officer: John Strylowski, 202-343-6191

Dated: February 3, 1987.

Ralph W. Tarr,

Solicitor.

[FR Doc. 87-2604 Filed 2-6-87; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[NV-010-07-4322-10]

Elko District Grazing Advisory Board; Meeting

In accordance with the Federal Advisory Committee Act, The Taylor Grazing Act, The Federal Land Policy and Management Act, The Public Rangelands Improvement Act, and section 3, Executive Order 12548 of February 14, 1987, notice is hereby given that the Elko District Grazing Advisory Board will meet on March 18, 1987. The meeting will start at 0930 a.m. in the Elko District Office conference room, 3900 E. Idaho Street, Elko, Nevada.

The agenda for the meeting will include: (1) Organization of the Board (2) update FY 87 R.I. projects (3) discuss Proposed FY 88 R.I. projects (4) progress report on existing AMPs (5) discuss and make recommendations on Draft AMPs (6) increased costs of R.I. projects (7) review progress on monitoring (8) review proposed agreements and decisions.

The meeting is open to the public. Interested persons may make oral statements to the Board between 11:30 a.m. and 12:00 p.m. or file written statements for the Boards consideration. Anyone wishing to make an oral statement must notify the District Manager, BLM, 3900 E. Idaho Street, Elko, Nevada 89801 by March 12, 1987. Depending on the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Rodney Harris,

District Manager.

[FR Doc. 87-2675 Filed 2-6-87; 8:45 am]

BILLING CODE 4310-4C-M

[NM-040-07-4212-14; OK NM 58570 to OK NM 58573]

Realty Action; Dewey, Ellis, and Roger Mills Counties, OK; Land Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land sale notice.

SUMMARY: The following described lands have been examined and identified as suitable for disposal under Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2743, 43 U.S.C. 1701) at no less than the appraised fair market value:

Tract	Legal description	Acres plus accretions
Dewey County (DW)		
DW-4	T. 16 N., R. 19 W., I.M. Sec. 5, Lot 6	0.22
DW-10	T. 17 N., R. 15 W., I.M. Sec. 20, Lot 1	6.30
DW-11	T. 17 N., R. 15 W., I.M. Sec. 28, Lot 6	3.15
Ellis County (EL)		
EL-5	T. 17 N., R. 25 W., I.M. Sec. 5, SW¼NW¼	40.00
EL-6	T. 17 N., R. 25 W., I.M. Sec. 7, Lot 1	6.25
EL-15	T. 18 N., R. 25 W., I.M. Sec. 26, Lot 8	3.12
EL-18 [1]	T. 18 N., R. 25 W., I.M. Sec. 26, Lot 10	3.49
EL-19 [1]	T. 18 N., R. 25 W., I.M. Sec. 26, Lot 9	26.72
Roger Mills County (RM)		
RM-15 [1]	T. 18 N., R. 25 W., I.M. Sec. 33, Lot 7	16.38

Aggregating 105.63 acres plus accretions.

[1] The lands have been resurveyed and new lot numbers have been designated for the identified tracts.

The publication of this Notice in the **Federal Register** shall segregate the public lands in this Notice of Realty Action (NORA) from all appropriation under the public land laws, including the mining laws. The segregative effect of the NORA shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

The sale is for the surface estate only and all minerals will be reserved to the U.S. Government. The sale will be held on Friday, April 10, 1987. Bidding procedures, specific patent reservations, and other pertinent information concerning the sale will be outlined in a sales brochure. The sales brochure will be available approximately three weeks prior to the sale upon request from the Oklahoma Resource Area Headquarters, 200 NW., Fifth Street, Room 548, Oklahoma City, OK 73102.

Comments

For a period of 45 days after the date of publication of this Notice in the **Federal Register,** interested parties may submit comments in writing to the District Manager, Bureau of Land Management, 9522-H East 47th Place, Tulsa, Oklahoma, 74145. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will

become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Hans Sallani, Oklahoma Resource Area Headquarters, telephone 405–231–5491.

Jim Sims,

District Manager.

[FR Doc. 87–2658 Filed 2–16–87; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Alaska Land Bank Agreement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that on May 27, 1986, the Fish and Wildlife Service and Gana-a' Yoo, Limited, executed an agreement to include 92 percent of the corporation's land in the Alaska Land Bank Program. This notice is issued pursuant to section 907 of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, 94 Stat. 2371.

FOR FURTHER INFORMATION CONTACT: William H. Mattice, Deputy Chief, Division of Realty, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, (907) 786–3498.

Robert E. Gilmore,

Regional Director.

[FR Doc. 87–2645 Filed 2–6–87; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Cohanzick Zoo, Bridgeton, NJ, PRT–713719.

The applicant requests a permit to buy in interstate commerce one permanently injured male peregrine falcon (*Falco peregrinus*) from the Raptor Rehabilitation Center, University of Minnesota, St. Paul, MN, for exhibition and conservation education.

Applicant: Soco Gardens Zoo, Maggie Valley, NC, PRT–714699.

The applicant requests a permit to harass one male jaguar (*Panthera onca*) donated to them January 23, 1979, and one female jaguar (*Panthera onca*) on loan since January 21, 1976, from the Knoxville Zoological Park, Knoxville, Tennessee. These animals are being maintained for the purpose of exhibit.

Applicant: Kenneth Winters, Brewer, Main, PRT–714188.

The applicant requests a permit to import a trophy from a bontebok (*Damaliscus dorcas dorcas*) which was a member of a captive herd maintained by F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survivial of the species.

Applicant: New York Zoological Society, Bronx, NY, PRT–714273.

The applicant requests a permit to import 1 male and 1 female proboscis monkey (*Nasalis larvatus*) as they become available, from Sepilok, a Malaysan government holding facility for confiscated wildlife, for the purpose of enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of the these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: February 3, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87–2646 Filed 2–6–87; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

Availability of Final Environmental Assessment and Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of availability of final environmental assessment and finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR Parts 1500 through 1508); and the U.S. Section's Operational Procedures for Implementing section 102 of the National Environmental Policy Act (NEPA), published in the **Federal Register** September 2, 1981 (46 FR 44083–44094), the U.S. Section hereby gives notice that the Final Environmental Assessment and Finding of No Significant Impact for an international agreement for solution of the border sanitation problem at Naco, Sonora and Naco, Arizona are available. A Notice of finding of no significant impact dated December 23, 1986 provided a thirty (30) day comment period before making the finding final. The notice was published in the **Federal Register** on January 2, 1987 (52 FR 179–180).

FOR FURTHER INFORMATION CONTACT: Mr. M.R. Ybarra, U.S. Section Secretary; International Boundary and Water Commission, United States and Mexico; United States Section; The Commons, C–310; 4171 North Mesa; Paso, Texas 79902. Telephone: (915) 534–6698, FTS 570–6698.

SUPPLEMENTARY INFORMATION:

Proposed Action

The action proposed is that the Government of the United States enter into an agreement with the Government of Mexico, through the International Boundary and Water Commission, to provide that Mexico construct in its territory adequate sewage treatment and disposal facilities for the City of Naco, Sonora, Mexico and operate and maintain the facilities in such manner that there are no discharges of untreated or treated domestic and industrial wastewaters crossing the boundary into the United States at Naco, Arizona.

Alternatives Considered

Two alternatives were considered:

Preferred Alternatives

The Proposed Action Alternative provides for the Governments of the United States and Mexico to enter into an agreement for Mexico to construct, operate and maintain sewage treatment and disposal facilities in its territory for the treatment and disposal of sewage from Naco, Sonora with assurances that there are no discharges of untreated or treated domestic and industrial wastewaters crossing the boundary into the United States at Naco, Arizona.

No Action Alternative

The No Action Alternative will result in no anticipated change in existing conditions. In the event Mexico constructs, operates, and maintains the proposed system without the proposed agreement, there will be no firm means

to assure that this construction, operation, and maintenance will avoid pollution in U.S. territory. The risk is great that sewage will continue to cross the boundary and potential pollution of water supplies and other health hazards will continue without a firm basis for obtaining immediate and effective corrective actions.

Availability

Single copies of the Final Environmental Assessment and Final Finding of No Significant Impact may be obtained by request at the above address.

Dated: January 27, 1987.

Suzette Zaboroski,

Staff Counsel.

[FR Doc. 87-2674 Filed 2-6-87; 8:45 am]

BILLING CODE 4710-03-M

DEPARTMENT OF JUSTICE

Antitrust Division

The National Cooperative Research Act of 1984; the Industry/University Cooperative Research Center for Software Engineering; Notification of Venture

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 ("the Act"), the Industry/University Cooperative Research Center for Software Engineering, co-located at the University of Florida and Purdue University, has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Industry/University Cooperative Research Center for Software Engineering and its general areas of planned activities are given below:

The parties to the Industry/University Cooperative Research Center for Software Engineering are as follows:

—AT&T Information Systems
—Computer Sciences Corporation
—Digital Equipment Corporation
—GTE Data Services
—Harris Corporation
—Hewlett Packard Corporation
—IBM Corporation
—Magnavox Government and Industrial Electronics Company
—Modular Computer Systems, Inc.
—Racal-Milgo, Inc.

The objectives of the Industry/University Cooperative Research Center for Software Engineering are as follows:

To sponsor research designed to improve the productivity of computer software developers and the quality of computer software; to build models and prototypes of tools which are related to these objectives; and to train graduate level students in the field of software engineering.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-2673 Filed 2-6-87; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87-12]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATE AND TIME: March 11, 1987, 1:30 p.m. to 3:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Federal Building 6, 400 Maryland Avenue, SW, Washington, DC 20546, Room 7002.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert L. Roth, Code LB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-8341).

SUPPLEMENTARY INFORMATION: The Panel will present its annual report to the NASA Administrator. This is pursuant to carrying out its statutory duties for which the Panel reviews, evaluates, and advises on those program activities, systems, procedures, and management policies that contribute to risk and the identification of assessment of these for management. Priority is given to those programs that involve the safety of manned flight. The major subjects will be the Space Shuttle Program, Space Flight Operations, Space Station, and Aeronautical Operations.

Visitors will be admitted to the meeting room up to the capacity, which is approximately 60 persons including Panel members and other participants. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open.

Date: March 11, 1987.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 87-2579 Filed 2-6-87; 8:45 am]

BILLING CODE 7510-01-M

[Notice 87-11]

NASA Advisory Council, Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Aviation Safety Research.

DATE AND TIME: March 3, 1987, 8:30 a.m. to 4:30 p.m.; March 4, 1987, 8:30 a.m. to 4:30 p.m.

ADDRESS: Technical Building, Director's Conference Room, Federal Aviation Administration (FAA) Technical Center, Atlantic City Airport, Atlantic City, NJ 08405.

FOR FURTHER INFORMATION CONTACT: Mr. Louis J. Williams, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2798.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics and Space Technology (OAST). Special ad hoc teams were formed to address specific topics. The ad hoc team on Aviation Safety Research, chaired by Mr. Donald Pritchett, is comprised of nine members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

March 3, 1987: 8:30 a.m.—Welcome to FAA Technical Center.

8:45 a.m.—Opening Remarks.

9 a.m.—NASA Aviation Safety Resources Summary.

9:30 a.m.—FAA Safety Related Research.

1 p.m.—Cockpit Technology Program.

2 p.m.—FAA Accident-Incident Data Collection Programs.

3 p.m.—Summary of Safety-Related Certification.

4 p.m.—Crashworthiness Testing.

4:30 p.m.—Adjourn.

March 4, 1987: 8:30 a.m.—Summary of Air Traffic Control Automation.

11 a.m.—Update on Results of B757 Study.

11:30 a.m.—NASA Langley Research Center/Ames Research Center Coordination.

1:30 p.m.—Review Team Caucus.

4:30 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 87-2578 Filed 2-6-87; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ENDOWMENT ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting; Music Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Professional Training Section) to the National Council on the Arts will be held on February 25, 1987, from 9:00 a.m.—8:00 p.m. and on February 26, 1987 from 9:00 a.m.—6:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 26, 1987, from 11:30 a.m.—12:30 p.m. for a discussion of policy and guidelines.

The remaining sessions of this meeting on February 25, 1987, from 9:00 a.m.—8:00 p.m. and on February 26, 1987, from 9:00 a.m.—11:30 a.m. and from 1:30 p.m.—6:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

February 2, 1987.

[FR Doc. 87-2606 Filed 2-6-87; 8:45 am]

BILLING CODE 7537-01-M

National Endowment on the Arts; Meeting; Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Mimes Section) to the National Council on the Arts will be held on February 25, 1987, from 10:00 a.m.-5:30 p.m. in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

February 2, 1987.

[FR Doc. 87-2607 Filed 2-6-87; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Earth Sciences; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Earth Sciences.

Date: February 25, 26 and 27, 1987.

Time: 8:30 a.m. to 5:00 p.m. on February 25 and 26; 8:30 a.m. to 12:00 p.m. on February 27.

Place: The National Science Foundation, Room 642, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. James Fred Hays, Division Director, Earth Sciences, Room 602, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-7958.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research and research-related activities in the Earth Sciences.

Agenda:

Wednesday, 25 February 1987

8:30 a.m.-12:00 p.m., Introduction and Opening Remarks—Dr. James Hays

Update on Long-Range Plan—Dr. Daniel Weill

Committee Discussion of Long-Range Plan

1:30 p.m.-5:00 p.m. Long-Range Planning Process

Thursday, 26 February 1987

8:30 a.m.-11:30 a.m. Long-Range Planning Process

1:00 p.m.-2:30 p.m. Joint Session with A/C for Polar Programs

Discussion with the NSF Director—Mr. Erich Bloch

Global Geosciences—Assistant Director, GEO Dr. William Merrell

2:30 p.m.-5:00 p.m. Continuation of Long-Range Planning Process

5:00 p.m.-6:30 p.m. Joint-Social with A/C for Polar Programs

Friday, 27 February 1987

8:30 a.m.-12:00 p.m. Wrap-up/discussion, Future schedule and agenda.

M. Rebecca Winkler,

Committee Management Officer.

February 4, 1987.

[FR Doc. 87-2655 Filed 2-6-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Polar Programs; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs.

Date and Time: February 25, 1987, 8:30 a.m.-5:30 p.m.; February 26, 1987, 8:30 a.m.-5:00 p.m.; February 27, 1987, 8:30 a.m.-12:00 noon.

Place: Room 540, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting:

Closed—February 25, 1987, 1:00 p.m.-5:30 p.m.; February 26, 1987, 3:30 a.m.-11:30 a.m.

Open—February 25, 1987, 8:30 a.m.-11:30 a.m.; February 26, 1987, 1:00 p.m.-5:00

p.m.; February 27, 1987, 8:30 a.m.–12:00 noon.

Contact Person: Dr. Peter E. Wilkniss, Division Director, Division of Polar Programs, Room 620, National Science Foundation, Washington, DC 20550, Telephone: 202/357–7766.

Purpose of Committee: Serves to provide expert advice to the U.S. Antarctic Program and the Arctic Program, including advice on polar operations support, budgetary planning, polar coordination and information, and science programs.

Agenda:

February 25, 1987

—8:30 a.m.–9:00 a.m., Welcome and Introductions, Administrative Announcements, Review and Adopt Agenda

—9:00 a.m.–10:15 a.m., Briefing on NSB Review of NSF Role in Polar Regions

—10:30 a.m.–11:30 a.m., Response to DAC Review of R/V POLAR DUKE

—1:00 p.m.–5:30 p.m., Oversight Review of Polar Earth Sciences Program.

February 26, 1987

—8:30 a.m.–11:30 a.m., Continue Peer Oversight Review of Polar Earth Sciences including Antarctic Mapping, Sediment Coring, and Field Camp Operations

—1:00 p.m.–5:00 p.m., NSF and Polar Programs Overview, Global Geosciences, and Arctic Research Discussion.

February 27, 1987

—8:30 a.m.–10:00 a.m., Summary and Report on Oversight Review

—10:00 a.m.–11:30 a.m., DAC Membership, Plans and Schedule for Future Meetings.

Reason for Closing: The meeting will deal with a review of grants and declinations in which the Committee will review materials containing the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This meeting will also include a review of peer review documentation pertaining to applicants. Any non-exempt materials that may be discussed at this meeting (proposals that have been awarded) will be inextricably intertwined with the discussion of exempt materials and no further separation is practical. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, National Science Foundation, on July 6, 1979.

Summary Minutes: May be obtained from Contact Person.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87–2656 Filed 2–6–87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-320]

General Public Utilities Nuclear Corp.; Environmental Assessment and Notice of Finding of No Significant Environmental Impact

The U.S. Nuclear Regulatory Commission (the Commission) is planning to issue two Exemptions to the requirements of 10 CFR Part 50, Appendix A, General Design Criteria 17 and 19, relative to Facility Operating License No. DPR–73, issued to General Public Utilities Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station Unit 2 (TMI–2), located in Londonderry Township, Dauphin County Pennsylvania. By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set of formal license requirements was imposed to reflect the post-accident condition of the facility and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292). The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

Environmental Assessment

Identification of Proposed Action

The actions being considered by the Commission are exemptions from 10 CFR Part 50, Appendix A, General Design Criteria (GDC) 17 and 19 relating to requirements for electric power systems and nuclear station control rooms. Specifically, GDC 17 requires that an onsite and offsite electric power system shall be provided to permit functioninq of structures, systems, and components important to safety. As relevant to the licensee's request, GDC 19 requires that a control room shall be provided from which actions can be taken to operate the nuclear power unit safely under normal conditions and to maintain it in a safe condition under accident conditions. GDC 19 further requires that radiation protection shall be provided to permit access and occupancy of the control room under accident conditions, within specified exposure limits.

The Need for the Proposed Action

TMI–2 is currently in a post-accident, cold shutdown, long-term recovery mode, with sufficient decay heat removal assured by direct heat loss from the reactor coolant system (RCS) to the reactor building atmosphere. In case of a TMI–2 loss of coolant event, sufficient borated makeup water will be provided by a passive gravity feed system to maintain the level of the RCS above the damaged fuel for a minimum of 10 days. Dedicated equipment is available and procedures have been established to provide recirculation to assure long-term core coverage, if necessary, even in the unlikely event that the Unit 2 control room is temporarily uninhabitable. Consequently, the facility can be maintained for the short term in a safe, stable shutdown condition without relying upon action from control room personnel and continuous manning of the TMI–2 control room is not necessary under worst-case accident conditions to achieve the underlying purpose of the requirement. For this reason, a partial exemption to the requirements of GDC 19 is justified.

Since continuous control room manning is no longer necessary for all postulated events, with TMI–2 in its current long-term cold shutdown mode, control room emergency air cleanup system operability does not have to be continuously maintained. Therefore, onsite emergency backup power provided by the diesel generators is not needed for the system. This removes the need for the last load on the diesel generators still required by the facility license, and safe shutdown of the plant is no longer dependent on the onsite backup emergency power source. Thus, the performance of maintenance and surveillance of the emergency diesel generators required by GDC 17 would impose an unnecessary burden and expense on the licensee with no concomitant benefit in terms of achieving the underlying purpose of the requirement.

Environmental Impact of the Proposed Action

The staff has evaluated the subject exemptions and concludes that in light of the current and future condition of the facility described above, there are no significant radiological or nonradiological impacts to the environment as a result of this action. The exemptions remove specific features of the Commission's requirements to provide an onsite electric power system and a control room to maintain the nuclear power unit

in a safe condition following an accident.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no significant environmental impact associated with the proposed exemptions, any alternatives to this action will have either no significant environmental impact or greater environmental impact. This would not reduce significant environmental impacts of plant operations and would result in the application of unnecessary regulatory requirements.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Programmatic Environmental Impact Statement for TMI–2, dated March 1981.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions. Based upon the foregoing environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action see: (1) Letter from F.P. Standerfer, GPUNC to W.D. Travers, USNRC, Exemption from 10 CFR Part 50 Appendix A, General Design Criteria 17 and 19, dated December 10, 1986. This document is available for inspection at the Commission's Local Public Document Room, 1717 H Street, NW., Washington, DC, and at the Commission's Local Public Document Room at the State Library of Pennsylvania, Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Bethesda, Maryland, this 3rd day of February 1987.

For the Nuclear Regulatory Commission.

Michael T. Masnik,

Acting Director, TMI–2 Cleanup Project Directorate, Office of Nuclear Reactor Regulation.

[FR Doc. 87–2663 Filed 2–6–87; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24037; File No. SR–ISE–1986–1]

Self-Regulatory Organizations; Proposed Rule Change By Intermountain Stock Exchange ("ISE") Relating to the Withdrawal of the ISE's Current Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 31, 1986 the Intermountain Stock Exchange ("ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE hereby announces as a proposed rule change the withdrawal of its current rules permitting it to operate as a national securities exchange. Solely to avoid involuntary or inadvertent forfeiture of its legal status as a corporation under Utah law, ISE has not repealed its Constitution, or Articles I, II, IX(1), X(1) and XV(2) of its Rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.[1] The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In an agreement reached with the Commodities Exchange, Inc. ("COMEX") on June 25, 1986, in which COMEX acquired certain assets of the ISE, the ISE agreed to fulfill certain terms and conditions of the agreement, including the withdrawal of their rules and delisting of all securities.

The withdrawal of ISE's rules package will afford the self-regulatory organization an opportunity to devise a new set of rules meeting Commission requirements, if COMEX decides in the future to reapply ISE as a national securities exchange. The withdrawal follows the delisting of or revocation of unlisted trading privileges for all stocks traded on the ISE.[2]

B. Self-Regulatory Organization's Statement on Burden on Competition

ISE believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change were not received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in

[1] A current copy of the ISE Constitution and Rules has been included in the materials filed by the self-regulatory organization.

[2] *See* Securities Exchange Act Release No. 23760 (October 30, 1986).

accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the COMEX. All submissions should refer to the file number in the caption above and should be submitted by March 2, 1987.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Dated: January 29, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2618 Filed 2-6-87; 8:45 am]

BILLING CODE 8010-01-M

[[Release No. 34-24041; File No. SR-AMEX-87-4]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc.; Relating to Extension of AUTOAMOS Emergency Pilot Plan

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 13, 1987, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes to enhance and extend for an additional year the pilot plan which permits the implementation of emergency procedures for the execution of AUTOAMOS orders during unusual market conditions. The details of the policy change are set forth below in Item II-A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In November, 1985, the Exchange implemented a pilot program under which two Floor Governors were permitted to authorize implementation of emergency AUTOAMOS procedures, for short periods of extremely high order flow, in any listed class or series of options (*see* SR-AMEX-85-28). Under the pilot plan, the specialist is permitted, after approval of two Floor Governors and appropriate notification, to execute incoming AUTOAMOS orders, either as agent against the book or as principal, without exposing them to the crowd.

Since the pilot plan was approved, the emergency procedures were implemented only twice in Major Market Index ("XMI") options. The principal reason for the apparent infrequent emergency procedures in XMI options was the commencement of the AUTO-EX* XMI pilot (SR-AMEX-85-29) the following month (December 1985). The AUTO-EX pilot was so successful in enhancing execution and operational efficiencies in the XMI market, without sacrificing protection for customer orders on the book, that the procedures of the emergency pilot plan were not required to be implemented thereafter in XMI.

The Exchange now has the capability of utilizing AUTO-EX for short emergency periods in equity options. While there has been no use of the emergency procedures for equity options during the past year, the Amex believes it is important to have available the most efficient means of dealing with emergency high volume situations if and as they arise. Accordingly, the Exchange proposes to extend the AUTOAMOS pilot program and enhance its efficiency by using AUTO-EX when it has been determined by two Floor Governors that a "breakout" situation is occurring.

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by developing procedures to maintain the speed and efficiency of the AUTOAMOS system.

Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden of Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Market Makers Association, an association of Exchange members who are Registered Options Traders has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

---

* AUTO-EX is an automatic system which permits member firms to route public customer market and marketable limit orders of up to 10 contracts through AUTOAMOS for automatic execution at the best bid or offer displayed at the time the order is entered into the system. If the best bid or offer is on the specialist's book, the incoming order is routed to the specialist's post where it is executed against the book order. If the best bid or offer is not on the specialist book, the contra side of the AUTO-EX trade is assigned to one of the Amex Registered Option Traders who have signed on the system or to the specialist who participates in the rotation.

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 2, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 30, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2622 Filed 2-6-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24040; File No. SR-CBOE-86-34]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

On October 28, 1986, the Chicago Board Options Exchange, Incorporated ("CBOE") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change clarifying the articulation of market-maker obligations.

The proposed rule change was noticed in Securities Exchange Act Release No. 23882 (December 11, 1986), 51 FR 45412 (December 18, 1986). No comments were received on the proposed rule change.

The rule change is designed to clarify market-maker obligations. In its rule filing, CBOE indicates that the purpose of the proposed rule change is to make the CBOE's rules more enforceable and to improve market quality. The CBOE summarized the specific rule changes as follows.

A new subpart (c) has been added to Rule 8.3, to limit market-maker appointments to the options classes at three trading stations. This would limit appointments to approximately ten option classes, since most stations have three or four classes.[3]

Rule 8.7 has been amended to add more detailed articulation of a market-maker's obligations. Current Subpart (b)(ii) of the rule has been made part of a guideline, at Interpretation .02(b).

The bid-ask differential subpart of Rule 8.7 has been amended. In part, the proposal eliminates the general allowance of differentials of up to twice the maximum allowable differential, which has been allowed in the furthest term options.

The articulation of market-making obligations states that market-makers should compete to make the best markets, make markets for a reasonable size and update market quotations on changed market conditions. Interpretations .02, .05, and .06 further articulate these concepts. Interpretation .02 to Rule 8.7 is new. In addition to setting forth the "one point" rule as a guideline, Interpretation .02 provides that it is a violation to buy a call or sell a put ¼ point or more below parity, absent circumstances justifying such a trade.[4] Interpretation .02 also clarifies that the "one point" rule applies to inter-day and intra-day transactions within the time limit specified therein.

Interpretation .05 interprets new section (b)(ii) of the Rule, calling for a market-maker to make markets which will ordinarily be honored to a reasonable number of contracts. Interpretation .05 defines reasonable as five contracts, unless an option class is exempted by the Market Performance Committee. Rule 6.44, which provides that a bid or offer is deemed to be for one contract, is being made subject to Rule 8.7. This will allow Rule 8.7 to increase the market-maker's normal minimum bid or offer to five contracts under Interpretation .05.

Interpretation .06 is new. It provides that market-makers, who are expected to maintain two-sided markets, are deemed to be making two-sided markets by bidding or offering for an options contracts. Thus, under Interpretation .06, a bid or offer by a market-maker implies, respectively, an offer or bid at the price differential allowed under Rule 8.7(b)(iv).

Interpretation .01 to Rule 8.7 has been modified to extend the price continuity obligation from one day to the next, except in unusual conditions. Interpretation .03, concerning in-person transactions, has been modified (1) to require in-person transaction calculations to be performed on a quarterly basis not monthly, and (2) to allow the Market Performance Committee to exempt options classes from the 25 percent in-person transaction calculation.

The CBOE contends that the statutory basis for the proposed rule change is section 6(b) of the Act in that it is designed to protect investors and the public interest by more detailed articulation of market-maker obligations and by narrowing permissible bid-ask differentials. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 30, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2623 Filed 2-6-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24048; File No. SR-PCC-87-01]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Clearing Corp. Amending Its Purchase and Sales Department Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 13, 1987, the Pacific Clearing Corporation ("PCC") filed with the Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

PCC's proposed rule change amends its current Purchase and Sales ("P&S") Department's procedures on handling inquiries from member firms and post specialists. PCC states that the proposal limits the responsibility on the part of P&S to that of a referral between the executing broker and the member firms or specialists. The amended procedures ensure that the P&S Department does not initiate corrections to erroneous transactions.

Furthermore, PCC states that the proposed rule change is consistent with

---

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] According to CBOE, the new provision also allows the Market Performance Committee to exempt a market-maker from this limitation, which will ensure that, where necessary for the market, market-makers can have additional appointments.

[4] The "one point" rule provides that a market-maker should not bid or offer more than one point away from the previous transaction price for a particular options contract plus or minus any change in the underlying security's sales price.

section 17A(b)(3)(F) of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions and fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of the Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the change if it appears to the Commission that it is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of PCC. All submissions should refer to File No. SR–PCC–87–01 and should be submitted by March 2, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 2, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–2620 Filed 2–6–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24043; File No. SR–Amex–86–29]

Self-Regulatory Organizations; Order Granting Partial Approval to Proposed Rule Change by the American Stock Exchange, Inc. Relating to Numerical Criteria for the Original Listing of Securities and to Suspension and Delisting Policies

I. Introduction and Background

The American Stock Exchange, Inc. ("Amex") submitted, on November 14, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to amend sections 101, 102, 104, and 107 of the Amex *Company Guide*, relating to numerical criteria for the original listing of securities, and section 1003 of the *Company Guide*, relating to suspension and delisting policies.

In its filing, the Amex stated that the intention of the proposal was to update its numerical listing criteria while continuing to ensure that only financially secure companies with sufficient numbers of investors are listed on the Exchange. In particular, the Amex intended the modifications to accommodate new "growth" industries, such as bio-technology companies, cable television franchises, and other service or research oriented enterprises. The Amex noted that some of these companies have sufficient growth potential to merit listing on the Exchange, but, due to their nature, may lack the necessary tangible assets or extended history of profitable performance to qualify under the existing standards.[1]

Notice of the proposed rule change, together with the terms of substance of the proposal, was given by the issuance of a Commission release (Securities Exchange Act Release No. 23863, December 5, 1986) and by publication in the **Federal Register** (51 FR 44964, December 15, 1986). No comments were received regarding the proposal.

II. Description of the Proposal

A. Financial Guidelines

Presently, section 101 of the *Company Guide* requires that a company have tangible net worth of four million dollars, pre-tax income of $750,000 for the previous fiscal year, and net income of $400,000 for the previous fiscal year, to be eligible for listing. The Amex proposes to eliminate the net income standard and instead require a minimum pre-tax income of $750,000 for the last fiscal year, or for two of the last three fiscal years.[2] The Amex also proposes to replace tangible net worth requirement with a four million dollar shareholders' equity standard. The newer standard would allow the Amex to consider, as part of an issuer's net worth, the value assigned to copyrights, franchises, and other "intangibles" that clearly have monetary value.

B. Distribution Guidelines

Section 102(a) of the Company Guide provides that a company must have at least 500,000 shares in public distribution,[3] held by at least 1,000 stockholders, including 800 holders of 100 shares or more. In addition, at least 150,000 shares must be held in lots of between 100 and 1,000 by at least 500 holders. Issues that fall below these guidelines may be accepted provided there are at least 800 shareholders and daily volume in the stock over a six-month period averages 2,000 shares per day. The Amex proposes to streamline this standard by mandating an 800 holder requirement for companies with between 500,000 and 1 million shares publicly held, and a 400 holder requirement for companies with a public float in excess of one million. The Amex also proposes an alternative standard of 400 shareholders for companies with 500,000 shares and daily volume in excess of 2,000 shares per day over a six-month period. The Amex also proposes to lower its minimum price per share from $5. to $3.

C. Bonds and Debentures

The Amex proposes to amend section 104, concerning listing requirements for bonds and debentures, by reducing from 300 to 100 the number of holders required for the listing of debt securities issued by companies that do not have common stock listed on either the Amex or New York Stock Exchange.

D. Alternate Listing Criteria

The Amex proposes to amend its alternate listing guidelines [4] by reducing

---

[1] The listing standards promulgated by the Exchange are not always dispositive of a company's application for listing. *See* section 101 of the *Company Guide*. Specifically, section 101 states, "[t]he fact that an applicant may meet the guidelines set forth below does not necessarily mean that the Exchange will approve the applicant for listing. On the other hand, in certain circumstances, an application may be approved even though the company does not meet all the statistical guidelines." *Id.*

[2] In its filing, the Amex also proposed, as an alternative to the pre-tax income standard, a minimum requirement of $1.5 million in operating cash flow for the previous fiscal year. The Amex has consented to an extension of time for Commission consideration of that proposed provision, and therefore does not object to partial approval of SR–Amex–86–29, excluding the provision noted above. *See* letter from Benjamin Krause, Executive Vice-President, Amex, to Sharon Lawson, Branch Chief, Division of Market Regulation, SEC, dated January 26, 1987. Accordingly, the Commission is not addressing the Amex's proposed cash flow provision in this approval order.

[3] *See* section 102(a). The term "public distribution" is defined as holdings exclusive of officers, directors, controlling shareholders, and other concentrated or family holdings.

[4] *See* section 102. According to the *Company Guide*, the alternate standards were promulgated to facilitate listing "certain financially sound companies [that] are unable to fully meet the Exchange's existing earnings criteria because of the nature of their business, or because of continuing large expenditures of funds for research and development." *Id.*

its five year operational history requirement to three years and by replacing its $12 million tangible net worth standard with a $4 million shareholders' equity standard. To offset those amendments, the Amex proposes to raise the minimum market value of publicly held shares from $10 million to $15 million. Finally, the Amex intends to implement the same distribution requirements for companies listed under the alternate criteria as exist for other listing applicants.

E. Delisting Criteria

The Amex proposes to amend sections 1003(a) (i) and (ii) by replacing the minimum tangible net worth standards with the shareholders' equity standard. In addition, section 1003(b) would be amended to reduce from 600 to 300 the number of holders below which a company would be considered for delisting.

III. Discussion

The Commission does not believe that the proposed amendments to the financial and distribution standards constitute a material lowering of the Amex listing criteria, despite the fact that they effectively increase the number of potential Amex listees. In particular, the replacement of the dual income standard (pre-tax income and net income) with the single net income standard puts the Amex in line with the single income standards of the New York Stock Exchange ("NYSE") and the National Association of Securities Dealers Automated Quotation ("NASDAQ") system.[5] The replacement of the tangible net worth standard with the shareholders' equity standard, which takes into account patents, copyrights, and other intangible assets possessing assignable monetary value, implements an easily defined, readily available standard that has increased utility for evaluating companies that are not engaged exclusively in manufacturing.

Further, the Commission is pursuaded by the comments of the Amex that the amendments to their distribution guidelines will not affect the ability of Amex specialists to maintain a fair and orderly market in a newly listed security. Primarily, the Amex pointed to changed auction market conditions as support for their decision to remove the distribution requirement mandating 150,000 shares held in lots of between 100 to 1,000 shares by at least 500 holders. The Amex argued that this moderately sized distribution category is now of limited importance to liquidity, since a substantial and growing percentage of trading activity occurs in blocks of 1,000 shares or more, making the requirement for smaller block holders both unnecessary and difficult to achieve.

Note.—*See* 1986 *Amex Fact Book.* According to the *Fact Book*, the breakdown by transaction for 1985 is as follows:

Share size	Percent of transactions	Percent of volume
0–99	0.2	0.01
100–199	21.8	1.74
200–499	30.6	6.59
500–999	19.3	8.97
1,000–4,999	23.7	31.57
5,000+	4.2	51.12

The Amex also argued that the predominance of larger investors, making larger transactions, with the concomitant decline in importance of odd-lot and small round-lot holders, makes the requirement of a larger shareholder base less important.

The Amex further suggested, and the Commission agrees, that trading volume and public float minimums, if coupled with a reasonable requirement on the minimum number of shareholders for a company, will enable a specialist to maintain a fair and orderly market. Therefore, the Commission endorses the Amex minimums of 800 shareholders for companies with a public float of between 500,000 and one million shares, a 400 holder requirement for those companies with a public float in excess of one million shares, and a 400 holder requirement when the potential listee can demonstrate a 500,000 share float and average trading volumes in excess of 2,000 shares per day over the previous six months.

The Commission finds the remaining proposals presented by the Amex to be consistent with the goals of the *Company Guide* and the purposes of the Act. The proposed amendments to the alternate listing criteria in section 107 should add utility to that section while continuing to maintain standards similar to those traditionally employed by the Amex. The Commission likewise finds credible Amex's claim that, due to the predominance of institutional holdings, a 300 holder requirement for bond listings for companies that do not trade common stock on the NYSE or Amex is practically impossible to achieve. Given the present nature of exchange bond trading, the Commission agrees that a 100 holder requirement is sufficient to ensure a relatively liquid market for bond trading. Lastly, the Commission endorses the Amex's reasoning on its delisting and minimum price-per-share amendments.

The Commission does not believe the Amex proposal imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal should increase competition for new listings between the Amex and other self-regulatory organizations, particularly in the area of young, high technology companies possessing significant growth potential. Finally, in addition to the Commission's findings that the listing standard changes are consistent with the Act and should not impair market liquidity or the ability to maintain fair and orderly markets, the Commission notes that any Amex listing decision will continue to be guided by the exchange's own business and marketing interests.

IV. Conclusion

Based on the above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(5) and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned portions of the proposed rule change be, and hereby are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 30, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–2619 Filed 2–6–87; 8:45 am]

BILLING CODE 8010–01–M

[5] *See* § 240.11Aa2–1(b)(4)(ii)(A), which mandates that an issuer of a security must have an annual net income of $300,000 to meet the NASDAQ Tier 2 requirement; NYSE Rule 495B.30, which requires that an issuer have pre-tax income of $2.5 million in the previous year and $2 million for each of the preceding 2 years, or 6.5 million in pre-tax income over the last three years, with a minimum of $4.5 million in the last year.

[Release No. 34–24042; File No. SR–NSCC–86–16]

Notice of Filing and Immediate Effectiveness of Proposed Rule Change By National Securities Clearing Corp.

Relating to an amendment to National Securities Clearing Corporation's ("NSCC") Rules and Fee Structure.

Comments are requested within 21 days after the date of this publication.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15

U.S.C. 78s(b)(1), notice is hereby given that on December 23, 1986. NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The rule change is set forth in the Important Notice as Exhibit 1 to NSCC's filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC enclosed statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the placed specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC's present discount policy, when revenues exceed costs, is to discount certain fees. NSCC has determined that, in certain cases, while overall revenues may exceed costs, it is not appropriate to discount fees for a new service that would otherwise be eligible for a discount, until the development costs for the service have been recovered.

Accordingly, the purpose of this rule change is to notify participants that the fees paid for comparison of transactions in municipal securities are ineligible for a discount until NSCC has recovered its development costs for the National Municipal Comparison System.[1]

Insofar as the proposed rule change provides for the equitable allocation of reasonable fees among its participants, it is consistent with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments on the proposed rule change have been solicited or received. NSCC will notify the Securities and Exchange Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the 1934 Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the 1934 Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withhold from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 2, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 30, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2621 Filed 2-6-87; 8:45 am]

BILLING CODE 8010-01-M

[1] Other fees related to municipal security transactions are not affected by this change. Specifically, trade correction fees and receive and deliver fees with respect to municipal securities will continue to be subject to the discount because of difficulties in separating charges relating to municipal securities from charges related to other securities. In addition, Participant Fees are not affected because such fees generally are not subject to the NSCC discount.

SMALL BUSINESS ADMINISTRATION

Region VIII Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VIII Advisory Council, located in the geographical area of Casper, Wyoming, will hold a public meeting at 8:30 a.m., on Friday, March 13, 1987, at the 49er Inn, 330 West Pearl Street, Jackson, Wyoming, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Paul W. Nemetz, District Director, U.S. Small Business Administration, 100 East B Street, Federal Building, Room 4001, Casper, Wyoming 82601, (307) 261-5761.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 3, 1987.

[FR Doc. 87-2666 Filed 2-6-87; 8:45 am]

BILLING CODE 8025-01-M

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The Presidential Advisory Committee on Small and Minority Business Ownership, located in Washington, DC, will meet on Monday, February 23, 1987, at 9:00 a.m. until 4:00 p.m., Ceremonial Courtroom on the 19th floor of the Federal Building, 450 Golden Gate Avenue, San Francisco, California, 94102. At the hearing, private sector executives, local officials, trade associations, small and minority business entrepreneurs, will present testimony regarding the challenges they face in the development of their businesses, along with proposed solutions to these problems for possible implementation by the Federal Government.

Persons wishing to obtain further information should contact Milton Wilson, Jr., Office of Private Industry Programs, U.S. Small Business Administration, 1441 I. Street, NW.,

Room 602, Washington, DC 20416, telephone (202) 653–6526.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 3, 1987.

[FR Doc. 87–2665 Filed 2–6–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 998]

Finding of No Significant Impact; Annex V Regulations for the Prevention of Pollution by Garbage From Ships

The United States Coast Guard has prepared an environmental assessment for the Department of State concerning the proposed ratification of Annex V, Regulations for the Prevention of Pollution by Garbage from Ships, an optional annex to the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78). The Annex provides international regulations for limiting at sea disposal of potentially harmful debris generated during the normal operation of vessels, and contains a provision that prohibits, subject to limited exceptions, the disposal into the sea of all plastics.

Based on the findings of the environmental assessment, the Department concludes that no significant adverse environmental impacts will result from ratification of the Annex to the 1978 Protocol. To the contrary, it is anticipated that ratification will be environmentally beneficial.

Copies of the environmental assessment may be obtained from the Office of Oceans and Polar Affairs, Room 5801, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520 (202/647–3262).

Dated: January 21, 1987.

Edmund M. Parsons,

Director, Office of Environment and Natural Resources.

[FR Doc. 87–2617 Filed 2–6–87; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended January 30, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44631

Date Filed: January 28, 1987.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 25, 1987.

Description: Application of Piedmont Aviation, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations, requests a certificate of public convenience and necessity to provide round-trip air transportation between Charlotte, North Carolina and Nassau, Bahamas.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87–2649 Filed 2–6–87; 8:45 am]

BILLING CODE 4910–62–M

[Docket No. 44380]

Seattle/Portland—Japan Service Review Case; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to be on March 9, 1987, at 10:00 a.m. (local time) in Room 5332, Department of Transportation, 400 7th Street, SW., Washington, DC 20410, before the undersigned administrative law judge.

Dated at Washington, DC, February 3, 1987.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 87–2650 Filed 2–6–87; 8:45 am]

BILLING CODE 4910–62–M

[Docket No. 4467, et al.]

Aviation Proceedings; Agreements Filed During the Week Ending January 30, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44637

Parties: Members of International Air Transport Association.

Date Filed: January 30, 1987.

Subject: GIT Fares for Central/South America-TC3 except Japan.

Proposed Effective Date: April 1, 1987.

Docket No. 44638 R–1 & R–2

Parties: Members of International Air Transport Association.

Date Filed: January 30, 1987.

Subject: TC3 Special Amending Resolution—South West Pacific Adopt fares between Perth and Christchurch.

Proposed Effective Date: February 1 and April 1, 1987.

Docket No. 44639

Parties: Members of International Air Transport Association.

Date Filed: January 30, 1987.

Subject: Increase fares to/from Morocco—Airport tax.

Proposed Effective Date: April 1, 1987.

Docket No. 44640

Parties: Members of International Air Transport Association.

Date Filed: January 30, 1987.

Subject: LA79 within Europe—fares between Denmark, Norway, Sweden & USSR.

Proposed Effective Date: April 1, 1987.

Docket No. 44641 R–1 & R–2

Parties: Members of International Air Transport Association.

Date Filed: January 30, 1987.

Subject: Introduce New Zealand domestic proportional fares and amend U.S. proportional fares for travel from New Zealand & Cook Islands.

Proposed Effective Date: April 1, 1987.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87–2651 Filed 2–6–87; 8:45 am]

BILLING CODE 4910–62–M

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96–192, requires that the Department, as successor to the Civil Aeronautics

Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80–2–69 established the first interim SFFL and Order 86–12–9 set the currently effective two-month SFFL applicable through January 31, 1987.

In establishing the SFFL for the two-month period beginning February 1, 1987, we have projected nonfuel costs based on the year ended September 30, 1986 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department.

By Order 87–2–3 fares may be increased by the following adjustment factors over the October 1, 1979, level:

Atlantic	0.9567
Latin America	1.0496
Pacific	1.3061
Canada	1.1232

For further information contact: Julien R. Schrenk (202) 366–2441.

By the Department of Transportation:

Dated: February 2, 1987.

Vance Fort,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 87–2652 Filed 2–6–87; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD 87–007]

Houston/Galveston Navigation Safety Advisory Committee; Applications for Appointment to Membership

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Houston/Galveston Navigation Safety Advisory Committee.

The purpose of the Committee is to provide local expertise on such matters as communications, surveillance, traffic control, anchorages, and other related topics dealing with navigation safety in the Houston/Galveston area which are within the purview of Coast Guard regulation.

Three members from the public in the Houston/Galveston area are needed to fill vacancies. Applicants may be from State and local government agencies, the marine industry, environmental groups, academia, and other interested parties. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. The Advisory Committee normally meets three times a year at various locations within the Houston/Galveston area. Members serve voluntarily, without compensation from the Federal Government for salary, travel or per diem. Term of membership will not exceed the expiration date of the present committee charter, November 6, 1988, unless reappointed.

DATE: Requests for applications should be received no later than 15 March 1987.

ADDRESS: Persons interested in applying should write to Commander, Eighth Coast Guard District (mps), Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130–3396.

FOR FURTHER INFORMATION CONTACT: Commander David F. Withee, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Hale Boggs Federal Building, Room 1341, 500 Camp Street, New Orleans, LA 70130–3396; (504) 589–6901.

Dated: January 28, 1987.

Peter J. Rots,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 87–2662 Filed 2–6–87; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 159—Minimum Aviation System Performance Standards for Global Positioning System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 159 on Minimum Aviation System Performance Standards for Global Positioning System to be held on February 24–25, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of Minutes of the Fourth Meeting; (3) Report of the Integrity Working Group Activities; (4) Briefing on Long Term GPS Reliability; (5) Consideration of EUROCAE WG–28 Recommendations; (6) Review of Additions to Draft Committee Report; (7) Development of Committee Work Program and Schedule; (8) Assignment of Tasks; (9) Other Business; and (10) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 2, 1987.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 87–2584 Filed 2–6–87; 8:45 am]

BILLING CODE 4910–13–M

St. Louis Regional Airport, East Alton, IL; Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the St. Louis Regional Airport Authority under the provisions of Title 1 of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On October 7, 1985, the FAA determined that the noise exposure maps submitted by the St. Louis Regional Airport Authority under Part 150 were in compliance with applicable requirements. On October 27, 1986, the Administrator approved the St. Louis Regional Airport noise compatibility program. All of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the St. Louis Regional Airport noise compatibility program is October 27, 1986.

FOR FURTHER INFORMATION CONTACT: David L. Schein, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL–611, 2300 East Devon Avenue, Des Plaines, Illinois 60018 (312) 694–7538. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for St. Louis Regional Airport, effective October 27, 1986.

Under section 104(a) the Aviation Safety and Noise Abatement Act (ASNA) of 1979, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with FAR Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Aviation Safety and Noise Abatement Act of 1979, and is limited to the following determinations:

The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government.

Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982, or successor legislation. Where Federal funding is sought, requests for project grants must be submitted to the FAA Chicago Airports District Office in Des Plaines, Illinois.

The St. Louis Regional Airport Authority submitted to the FAA on May 9, 1985, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 1984 through September 1986. The St. Louis Regional Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on October 7, 1985. Notice of this determination was published in the **Federal Register** on October 24, 1985.

The St. Louis Regional Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to 1991, and beyond. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on May 12, 1986, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 13 proposed actions for noise mitigation, both on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective October 27, 1986.

Outright approval was granted for all the specific program elements. Program elements include extensions to runways 11/29 and 17/35, use of new airport facility development to buffer noise, acquisition of navigation easements, acquisition of eight residences and a church, the initiation of a noise monitoring and management program, and adoption of compatible land use zoning regulations in the airport vicinity.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator October 27, 1986. The Record of Approval, as well as other evaluation materials and documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the St. Louis Regional Airport Authority.

Issued in Des Plaines, Illinois, on January 7, 1987.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 87-2580 Filed 2-6-87; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

Technical Hazardous Liquid Pipeline Safety Standards Committee; Advisory Committee Charter

This notice announces the renewal of the Technical Hazardous Liquid Pipeline Safety Standards Committee under section 14 of the Federal Advisory Committee Act (5 U.S.C. App. 1; Pub. L. 92-463) and sets forth the charter of the Committee prepared in accordance with section 9 of that Act. This charter replaces the charter effective January 16, 1985, which is hereby terminated.

The purpose of the Technical Hazardous Liquid Pipeline Safety Standards Committee is to review proposed hazardous liquid pipeline safety standards and report to the Assistant Director for Regulation on the technical feasibility, reasonableness, and practicability of each such proposal. The Committee may propose safety standards to the Assistant Director for his consideration for hazardous liquid pipeline facilities.

It has been determined that renewal of the Technical Hazardous Liquid Pipeline Safety Standards Committee is in the public interest in connection with the performance of duties imposed by law on the Department under section 204(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2003(a)).

The charter of the Committee is set forth below:

Charter—Technical Hazardous Liquid Pipeline Safety Standards Committee

1. Purpose

This charter of the Technical Hazardous Liquid Pipeline Safety Standards Committee is prepared in accordance with the Federal Advisory

Committee Act (FACA) enacted October 6, 1972.

2. Background

Section 204 of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) authorizes the establishment and prescribes the duties of the Technical Hazardous Liquid Pipeline Safety Standards Committee. The Committee was established on January 16, 1981, with the appointment of 15 members.

3. Sponsor

The Office of Pipeline Safety is the Committee sponsor. The Assistant Director for Regulation is designated the Executive Director of the Committee and shall be the Department of Transportation (DOT) official authorized to call or adjourn meetings, approve the agenda, and otherwise monitor the Committee's meetings and progress.

4. Committee Objectives and Duties

The Assistant Director for Regulations shall submit to the Committee for its consideration any notice of proposed hazardous liquid pipeline safety standards published in the **Federal Register** (including both new standards and amendments to existing standards). Within 90 days after receipt by the Committee of any such proposal, the Committee shall prepare a report on the technical feasibility, reasonableness, and practicability of the proposal. Each report by the Committee, including any minority views, shall, if timely made, be published and form a part of the proceedings for the promulgation of standards. The Administrator, Research and Special Programs Administration, may prescribe a final standard at any time after the 90th day after a proposal's submission to the Committee, whether or not the Committee has reported on such proposal. The Committee may propose safety standards to the Assistant Director for his or her consideration for hazardous liquid pipeline facilities. The Assistant Director shall not be bound by conclusions of the Committee, but in the event that the conclusions of the majority of the current members of the Committee are rejected, the reasons for rejection shall be incorporated in the preamble published with the final rule (HLPSA, section 204, and 49 CFR 1.53). The Committee may also review and report on other matters related to the Department's hazardous liquid pipeline safety rulemaking function as are presented by the Assistant Director.

5. Membership

a. The Committee shall be composed of 15 members, each of whom shall be appointed by the Secretary, after consultation with public and private agencies concerned with the technical aspect of the transportation of hazardous liquids or the operation of pipeline facilities. Members shall be appointed on the basis of their experience in the safety regulation of the transportation of hazardous liquids and of pipeline facilities, or their training, experience, or knowledge in one or more fields of engineering applied in the transportation of hazardous liquids or the operation of pipeline facilities to evaluate hazardous liquid safety standards, as follows:

(1) Five members shall be selected from Federal, State, or local governmental agencies, and two of the five shall be State Commissioners selected after consultation with representatives of the national organization of State commissions;

(2) Four members shall be selected from the hazardous liquids industry, after consultation with industry representatives, and not less than three of the four shall be currently engaged in the active operation of pipeline facilities; and

(3) Six members shall be selected from the general public.

b. The membership shall be fairly balanced in terms of the points of view represented, and the advice and recommendations of the Committee shall be the result of its independent judgment (FACA, section 5(b) (2) and (3)).

c. Members are appointed for a term of 3 years except that a member may serve until a successor is appointed, but for not more than a total of 6 years.

6. Appointment of Officers

At the first meeting of each calendar year, the Assistant Director shall appoint a Chairman and Vice-Chairman, and the Committee shall, by majority vote of the members present, elect a Secretary. These three officers, who will serve until their successors are appointed, shall constitute an executive committee.

7. Meetings and Procedures

a. Calling Meetings

The Assistant Director for Regulation shall approve in advance the scheduling and agenda of each Committee meeting (FACA, section 10(f)). The Committee may recommend agenda items to the Assistant Director. A designated officer or employee of the Federal government shall attend each Committee meeting and is authorized to adjourn the meeting whenever he or she determines it to be in the public interest (FACA, section 10(e)).

b. Presiding at Meetings

The Chairman shall preside at all meetings of the Committee and of the Executive Committee, except that the Assistant Director or his or her delegate may preside whenever the Committee is, at the request of an official of the Department of Transportation, advising the Department on matters other than notices of proposed rulemaking. The Vice-Chairman shall assume and perform the duties of the Chairman in the event of his or her absence. A majority of the current members of the Committee must be present at a meeting to perform the Committee's statutory duties.

c. Duties of Secretary

The Committee Secretary shall, as directed by the Chairman, monitor records, summarize activities, prepare and process letter ballots, and prepare reports for submission to the Assistant Director. In the absence of the Secretary, the Chairman appoints a member of the Committee to perform the duties of the Secretary.

d. Notice of Meetings

Notice of each Committee meeting shall be published in the **Federal Register** at least 15 days in advance of the meeting, except in emergency situations. Other forms of notice are to be used to the extent practicable (FACA, section 10(a)(2)).

e. Frequency of Committee Meetings

The Committee meets at least twice each calendar year. In addition, Committee members may be polled or asked for comments on notices of proposed rulemaking or other matters at any time without formally assembling at one place.

f. Public Participation

Each Committee meeting shall be open to the public except where the Executive Director of the Committee determines in writing that the meeting, or a portion thereof, shall be closed for one of the reasons specified in 5 U.S.C. 552b(c) (FACA, section 10 (a)(1) and (d)). Public participation in the meeting may be limited by reasonable rules (FACA, section 10(a)(3)).

g. Minutes.

Detailed minutes of each Committee meeting shall be kept and certified to by the Committee Chairman. The minutes shall contain a record of the persons participating, a complete and accurate description of the matters discussed and conclusions reached, and copies of all reports received, issued, or approved by

the Committee (FACA, section 10(c)).

h. Availability of Records

The records, reports, transcripts, minutes, and other documents of the Committee shall be available for public inspection and copying at the Office of Pipeline Safety, 400 Seventh Street, SW., Washington, DC 20590, subject ot the Freedom of Information Act, 5 U.S.C. 552 (FACA, section 10(b)).

8. Compensation

Members of the Committee shall not be compensated. However, all members, while away from their homes or regular places of business, shall be allowed travel expenses, including per diem in lieu of subsistence.

9. Duration of the Committee

Under the provisions of the HLPSA, the Committee's purposes are continuing in nature; therefore, the Committee has an indefinite duration. The Committee itself must be renewed at successive 2 year intervals by the appropriate action of the Secretary (FACA, section 14(c)).

10. Administrative Support

The Assistant Director for Regulation is responsible for providing office space, equipment, supplies, clerical help, and other administrative and financial support for the Committee.

11. Annual Operating Cost

Estimated annual operating cost is approximately $20,000 for travel and recording the proceedings, plus about one-eighth person-year of staff support.

12. Public Interest

The formation and use of the Technical Hazardous Liquid Pipeline Safety Standards Committee is determined to be in the public interest in connection with the performance of duties imposed on the DOT by law. In fact, the HLPSA specifically requires DOT to submit all proposed hazardous liquid pipeline safety standards to the Committee as part of the proceedings for the promulgation of such standards.

13. Filing Date

January 16, 1987. This is the effective date of the charter which will expire 2 years from the date unless sooner terminated.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 87-2598 Filed 2-6-87; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: February 3, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC. 20220.

Bureau of the Public Debt

OMB Number: New
Form Number: PD 5237
Type of Review: New

Title: Subscription for Purchase of U.S. Treasury Securities State and Local Government Series One-Day Certificates of Indebtedness.

OMB Number: New
Form Number: PD 5238
Type of Review: New

Title: Request for Redemption of U.S. Treasury Securities—State and Local Government Series One-Day Certificates of Indebtedness.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Clearance Officer: Peter Laugesen (202) 376-4902, Bureau of the Public Debt, Room 445, 999 E. Street NW., Washington, DC 20226.

Dale A. Morgan,

Departmental Reports Management Office.

[FR Doc. 87-2654 Filed 2-6-87; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Change Other Than Routine Use Statements; Privacy Act of 1974; Amendment of System Notices

Notice is hereby given that the Veterans Administration (VA) is revising the numeric designation of the system name as set forth on page 738 oF the document entitled Privacy Act Issuances, 1984 Comp., Volume V and as amended at 50 FR 10886 (March 18, 1985), 50 FR 26875 (June 28, 1985), 50 FR 31453 (August 2, 1985), 51 FR 21782 (July 8, 1986), 51 FR 25141 (July 10, 1986), 51 FR 28289 (August 6, 1986) and 51 FR 36894 (October 16, 1986). In addition, the paragraph entitled, "System Manager(s) and Address:", is also being modified. These changes are necessary because of a recent merger in VA's Central Office. The Vocational Rehabilitation and Counseling Service (28) was merged with the Education Service (22) and is now the Vocational Rehabilitation and Education Service (22).

Notice of System of Records

In the system identified as 58 VA 21/22/28, "Compensation, Pension, Education and Rehabilitation Records-VA," appearing at page 738 of the document entitled Privacy Act Issuances, 1984 Comp., Volume V and as amended at 50 FR 10886 (March 18, 1985), 50 FR 26875 (June 28, 1985), 50 FR 31453 (August 2, 1985), 51 FR 24782 (Ju1y 8, 1986), 51 FR 25141 (July 10, 1986), 51 FR 28289 (August 6, 1986) and 51 FR 36894 (October 16, 1986), the system notice is revised as follows:

SYSTEM NAME:

Compensation, Pension, Education and Rehabilitation Records-VA (58 VA 21/22)

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Compensation and Pension Service (21); Director, Vocational Rehabilitation and Education Service (22), VA Central Office, Washington, DC 20420.

The Privacy Act of 1974, 5 U.S.C. 552a(e), requires agencies to inform the public of any changes to their system of records. However, since these changes do not alter the uses of the information in the system of records, public comment is not required. The changes to the system notice are effective January 21, 1987.

Approved: January 21. 1987.

Thomas K. Turnage,

Administrator.

[FR Doc. 87-2659 Filed 2-5-87; 8:45 am]

BILLING CODE 8320-01-M

Corrections

Federal Register
Vol. 52, No. 26
Monday, February 9, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 712

[OPTS-82031; FRL-3109-6]

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals

Correction

In rule document 86-25581 beginning on page 41328 in the issue of Friday, November 14, 1986, make the following correction:

§ 712.30 [Corrected]

On page 41330, in the third column, in § 712.30(t), in the third line, the date should read "February 12, 1987".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50537A; FRL-3146-8]

PBBs and Tris; Significant New Uses of Chemical Substances

Correction

In rule document 87-1631 beginning on page 2699 in the issue of Monday, January 26, 1987, make the following correction:

§ 721.230 [Corrected]

On page 2703, in the first column, in § 721.230(a)(1), in the seventh line, "21,2',", should read "2,2',".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-06-4212-12; A-20347-C]

Exchange of Public and State Land; AZ

Correction

In notice document 86-29479 beginning on page 174 in the issue of Friday, January 2, 1987, make the following corrections:

1. On page 174, in the second column, in T. 5 S., R. 31 E., in Sec. 6, the first lot should read "4".

2. On page 175, in the first column, in T. 9 S., R. 32 E., in Sec. 28, "E½W¼" should read "E½SW¼".

3. On the same page, in the second column, in T. 6 S., R. 28 E., in Sec. 36, before "SE¼" insert "SE¼NE¼,".

4. In the same column, in T. 8 S., R. 30 E., in Sec. 28, "N½, NW¼" should read "N½NW¼".

5. On the same page, in the third column, in T. 7 S., R. 31 E., in Sec. 21, "SW½NW¼" should read "SW¼NW¼".

6. On page 176, in the first column, in T. 12 S., R. 32 E., in Sec. 2, "S½,NW¼" should read "S½NW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A-20346-P]

Realty Action; Exchange of Public Lands, Maricopa, LaPaz, Yuma, Pima, and Yavapai Counties, AZ; Phoenix District Office

Correction

In notice document 86-28325 beginning on page 45401 in the issue of Thursday, December 18, 1986, make the following corrections:

1. On page 45402, in the first column, the 33rd line should read, "Secs. 13, 24,".

2. On the same page, in the same column, in the 39th line, "12,859.64", should read "12,979.64".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWA-37]

Establishment of Airport Radar Service Area

Correction

In rule document 87-729 beginning on page 1426 in the issue of Tuesday, January 13, 1987, make the following corrections:

§ 71.501 [Corrected]

On page 1430, in § 71.501, in the third column, in the fourth line of text, "International" was misspelled; and the latitude should read "23°53'55"N.".

BILLING CODE 1505-01-D

Federal Register

Monday
February 9, 1987

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 9, 15, 31, 45, and 52
Federal Acquisition Regulation (FAR); Definition of Special Test Equipment, Qualification Requirements, and Termination of Defined Benefit Pension Plans; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9 and 52

Federal Acquisition Regulation (FAR); Qualification Requirements

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulatory Council (DARC) are considering revisions to FAR 9.201, 9.202, and 9.206 and the clause at 52.209–1 to clarify what constitutes a "qualification requirement" and to whom or to what it applies.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before April 10, 1987, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 86–67 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Circular (FAC) 84–11 was issued as an interim rule on August 30, 1985, to implement certain provisions of Pub. L. 98–525 and Pub. L. 98–577. Item III of FAC 84–11 implemented those provisions of the public laws related to "qualification requirements" and imposed new procedural obligations on Federal agencies before they could require testing or other quality assurance demonstration as a condition to award of a Government contract.

After reviewing public and agency comments on FAC 84–11, Item III, two significant problems have come to light. First, the interim rule appears to have defined "qualification requirement" too broadly by impliedly covering industry specifications and restrictions which the Government has neither approved nor endorsed. Typically, this form of restricted specification arises when the Government buys a system or other complex end item based on a performance or functional specification. That system or end item may contain numerous components that are subject to restrictions contained in the prime contractor's or subcontractors' specifications or drawings. When the Government does not approve or endorse these specifications or drawings, they should not become "qualification requirements" as contemplated by Pub. L. 98–525 and Pub. L. 98–577. To subject these specifications and drawings to the new procedural obligations for establishing qualification requirements would burden industry and increase prices without any express statutory mandate to do so or even any apparent Government interest. The proposed rule, therefore, modifies the definition of "qualification requirement" at FAR 9.201 and as used in the clause at FAR 52.209–1 as well as the policy in 9.202 to eliminate this unnecessary and unintended extension of the new coverage on qualification requirements.

Second, the interim rule may have applied the new policies concerning "qualification requirements," even when properly defined, too narrowly by treating components of end items differently from the specific supplies or services actually purchased on a Government prime contract. In this regard, when a component of an end item is subject to a qualification requirement properly established by the Government, FAC 84–11 allows the prime contractor two options for satisfying the requirement *after award* of the prime contract. If the prime contractor intends to acquire the component, FAR 9.206–1(d) requires simply that the prime furnish ". . . a component that has met the qualification requirement *before award of a subcontract for the component.*" (Emphasis added.) Similarly, if the prime contractor elects to manufacture the component, the clause at FAR 52.209–2 requires simply that the prime ". . . have demonstrated its ability to meet the standards specified for qualification *before beginning to manufacture the components.*" (Emphasis added.) Neither of these options is consistent with Pub. L. 98–525's and Pub. L. 98–577's basic stipulation that a qualification requirement ". . . must be completed by an offeror *before award of a contract.*" (Emphasis added.) The public laws do not distinguish between end items and components. If, before award of a contract, an agency demands that a product, manufacturer, or source satisfy a requirement for advance testing or other quality assurance, that agency has established a "qualification requirement." To be able to enforce the qualification requirement when buying the product or service as an end item, it would appear that the agency must enforce the qualification equally when the product or service is only a component of the end item.

To implement Pub. L. 98–525 and Pub. L. 98–577 more accurately, the proposed rule modifies FAR 9.206–1(d) and the clause at FAR 52.209–1 to require that any qualification requirement applicable to a component be met before award of the prime contract, whether the contractor intends to purchase or manufacture the component. In light of these revisions, the proposed rule deletes the clause at FAR 52.209–2 as no longer necessary.

B. Regulatory Flexibility Act

The proposed rule applies to all small businesses that want to contract with the Government and which will either offer a product which is listed on a qualified products list, or which will participate in an acquisition which is limited to certain manufacturers, bidders, or sources that can meet established requirements prior to award. It is not feasible to estimate the number of small entities to which the proposed rule applies because the number of small businesses who would participate in these types of acquisitions is unknown. Also, the number of qualification requirements which will be modified or eliminated as the result of this proposed rule is unknown. An Initial Regulatory Flexibility Analysis has been prepared and forwarded to the Chief Counsel for Advocacy for the Small Business Administration.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, Pub. L. 96–354, specifies circumstances under which a regulatory flexibility analysis is required in connection with the issuance of a general notice of proposed rulemaking consistent with the Act. FAC 84–11, as published on August 30, 1985, contained an initial regulatory flexibility analysis because it appeared that the interim rule on qualification requirements would have a significant beneficial economic impact on a substantial number of small entities. In this connection, the interim rule attempts to carry out faithfully the basic congressional policy behind the new procedural obligations imposed by Pub. L. 98–525 and Pub. L. 98–577 on any agency wishing to establish and use a qualification requirement. By requiring agencies to (1) justify in writing the necessity for qualification requirements, (2) provide all interested parties with the standards that must be met and opportunity to qualify for award, and (3)

reimburse small businesses under certain circumstances for the costs incurred to qualify. Pub. L. 98–525 and Pub. L. 98–577 seek to increase competition, particularly among small businesses, on Government procurements. The legislative history of Pub. L. 98–525 and Pub. L. 98–577 reflects Congress' belief that these new procedural obligations would discourage agencies from using unnecessary qualification requirements which have the natural effect of limiting competition and foreclosing many markets entirely to small business.

The proposed rule should expand the beneficial economic impact anticipated from the interim rule (FAC 84–11, Item III) by clarifying that the new procedural obligations regarding qualification requirements apply equally to components of end items as to the end items actually purchased on the prime contract. This clarification should further discourage unnecessary qualification requirements, thereby removing barriers to small businesses and increasing competition among suppliers of component parts.

Reason for Proposed Agency Action

Congress amended Title 10 and Title 41 of the United States Code to require agencies to prescribe policies and procedures regarding qualification requirements for acquisitions that are subject to these requirements.

Objectives and Legal Basis

The proposed rule further implements Pub. L. 98–525 (10 U.S.C. 2319) and Pub. L. 98–577 (41 U.S.C. 253(e)) with the objective of encouraging new competitors for Government contracts. The proposed rule seeks to accomplish this by requiring agencies to justify, with respect to components of end items, the necessity for establishing qualification requirements assuring that the requirements are available to all offerors and sources and permitting offerors to demonstrate their ability to meet these requirements up to the time of award.

Description of and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The proposed rule applies to all small businesses that want to contract with the Government and which will either offer a product which is listed on a qualified products list, or which will participate in an acquisition which is limited to certain manufacturers, bidders, or sources that can meet established requirements prior to award. It is not feasible to estimate the number of small entities to which the proposed rule applies because the number of small businesses who would participate in these types of acquisitions is unknown. Also, the number of qualification requirements which will be modified or eliminated as the result of this proposed rule is unknown.

Projected Reporting, Recordkeeping, and Other Compliance Requirements

There are no additional projected reporting, recordkeeping or other compliance requirements likely to result from the proposed rule. Small businesses which qualify for reimbursement of testing and evaluation costs by the United States are required by the law to certify to their status as a small business under section 3 of the Small Business Act. This should not impose an additional burden on small businesses because they are already required to determine their status under Government contracts.

Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

There do not appear to be any relevant Federal rules which duplicate, overlap, or conflict with the proposed rule.

Significant Alternatives

The Regulatory Flexibility Act requires consideration of significant alternatives to the proposed rule that would accomplish the objectives of the statute and minimize any significant economic impact on small entities.

These alternatives include—

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) The clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rule for such small entities;

(3) The use of performance rather than design standards; and,

(4) An exemption from coverage of the proposed rule, or any part thereof, for such small entities. The proposed rule does not itself establish reporting or recordkeeping requirements. The use of performance rather than design standards, if feasible, is already mandated by Part 10 of the FAR. Qualification requirements which must be met by manufacturers or bidders (or their products) before being awarded a contract, are necessary to assure that the Government obtains a product which meets its minimum needs. Although these requirements cannot be waived or relaxed for small entities, they may be reimbursed for costs of testing and evaluation in some cases which should help them to become more competitive on these types of acquisitions.

C. Paperwork Reduction Act.

The Office of Management and Budget granted approval under OMB control number 9000–0083 on September 9, 1985, for an estimated total annual burden of 66,209 hours associated with FAC 84–11, Item III, Qualification Requirements. Since the proposed rule should not alter this burden, the approval number remains valid.

List of Subjects in 48 CFR Parts 9 and 52

Government procurement.

Dated: January 28, 1987.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 9 and 52 be amended as set forth below:

1. The authority citation for Parts 9 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Ch. 137; and 42 U.S.C. 2453(c).

PART 9—CONTRACTOR QUALIFICATIONS

2. Section 9.201 is amended by revising the definition "Qualification requirement" to read as follows:

9.201 Definitions.

* * * * *

"Qualification requirement" means a Government requirement for testing or other quality assurance demonstration that must be completed before award of a contract.

* * * * *

3. Section 9.202 is amended by revising paragraph (a)(1)(ii) to read as follows:

9.202 Policy.

(a) * * *

(1) * * *

(ii) Estimating the likely costs for testing and evaluation which will be incurred to become qualified; and

* * * * *

4. Section 9.206–1 is amended by revising paragraphs (b), (c), and (d) to read as follows:

9.206–1 General.

* * * * *

(b) Except when the agency head or designee determines that an emergency exists, whenever an agency elects, whether before or after award, not to enforce a qualification requirement which it established, the requirement

may not thereafter be enforced unless the agency complies with 9.202(a).

(c) If a qualification requirement applies, the contracting officer need consider only those offers identified as meeting the requirement or included on the applicable QPL, QML, or QBL, unless an offeror can satisfactorily demonstrate to the contracting officer that it or its product or its subcontractor or its product can meet the standards established for qualification before the date specified for award.

(d) If a product subject to a qualification requirement is to be acquired as a component of an end item, the contracting officer must assure that all such components and their qualification requirements are properly identified in the solicitation since the product or source must meet the standards specified for qualification before award.

* * * * *

5. Section 9.206–2 is revised to read as follows:

9.206–2 Contract clause.

The contracting officer shall insert the clause at 52.209–1, Qualification Requirements, in solicitations and contracts when the acquisition is subject to a qualification requirement.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.209–1 is revised to read as follows:

52.209–1 Qualification Requirements.

As prescribed in 9.206–2, insert the following clause:

Qualification Requirements (Jan. 1987)

(a) *Definition:* "Qualification Requirement," as used in this clause, means a Government requirement for testing or other quality assurance demonstration that must be completed before award.

(b) One or more qualification requirements apply to the supplies or services covered by this contract. For those supplies or services requiring qualification, whether the covered product or service is an end item under this contract or simply a component of an end item, the product, manufacturer, or source must have demonstrated that it meets the standards prescribed for qualification before award of this contract. The product, manufacturer, or source must be qualified at the time of award whether or not the name of the product, manufacturer, or source is actually included on a qualified products list, qualified manufacturers list, or qualified bidders list. Offerors should contact the agency activity designated below to obtain all requirements that they or their products or services, or their subcontractors or their products or services, must satisfy to become qualified and to arrange for an opportunity to demonstrate their abilities to meet the standards specified for qualification.

(Name) _____

(Address) _____

(c) If an offeror, manufacturer, source, product or service covered by a qualification requirement has already met the standards specified, the relevant information noted below should be provided.

Offeror's Name _____

Manufacturer's Name _____

Source's Name _____

Item Name _____

Service Identification _____

Test Number _____

(to the extent known)

(d) Even though a product or service subject to a qualification requirement is not itself an end item under this contract, the product, manufacturer, or source must nevertheless be qualified at the time of award of this contract, whether or not the Contractor or subcontractor will ultimately provide the product or service in question. If, after award, the Contracting Officer discovers that an applicable qualification requirement was not in fact met at the time of award, the Contracting Officer may either terminate this contract for default or allow performance to continue if adequate consideration is offered and the action is determined to be otherwise in the Government's best interests.

(e) If an offeror, manufacturer, source, product, or service has met the qualification requirement but is not yet on a qualified products list, qualified manufacturers list, or qualified bidders list, the offeror shall submit evidence of qualification with its offer in order to receive consideration. If this is a sealed bid acquisition and the product, manufacturer, or offeror that is already qualified or is to be qualified before award is not identified, either above or elsewhere in the bid, the Contracting Officer shall reject the bid. Unless determined to be in the Government's interests, this acquisition will not be delayed in order to provide an offeror with an opportunity to meet the standards specified for qualification.

(f) Any change in location or ownership of the plant where a previously qualified product or service was manufactured or performed requires reevaluation of the qualification. Similarly, any change in location or ownership of a previously qualified manufacturer or source requires reevaluation of the qualification. The reevaluation must be accomplished before the date of award.

(End of clause)

52.209–2 [Reserved]

7. Section 52.209–2 is removed and reserved.

[FR Doc. 87–2610 Filed 2–6–87; 8:45 am]

BILLING CODE 6820–61–M

48 CFR Parts 15, 31, and 52

Federal Acquisition Regulation (FAR); Termination of Defined Benefit Pension Plans

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council propose to issue more specific regulatory coverage concerning the termination of overfunded defined benefit pension plans and the resultant employer withdrawal of excess pension fund assets. The purpose of the new coverage is to provide rules for determining the amount of the Government's equitable share of the credit of prior periods' pension costs that arises from such asset reversion transactions.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before April 10, 1987 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 86–69 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Charges for pension costs have been accepted on Government contracts on the basis that funding was irrevocable and therefore that the Government would participate in all gains and losses incurred by pension plans. In recent years, many pension plans have been terminated and excess pension plan assets have reverted to and have been used by the sponsoring company for other purposes. Such proceeds represent an adjustment of prior period's pension costs. If the actual cost had been known, the prices the Government previously paid would have been reduced commensurately.

The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering more detailed FAR coverage dealing with Government receipt of a refund or credit when a contractor terminates an overfunded defined benefit pension plan

and withdraws excess funds from pension fund assets. The new coverage provides rules for determining the Government's equitable share of prior periods' pension costs which are recaptured by contractors when an underfunded pension plan is terminated. The same rules are also applicable when an underfunded plan is terminated and indemnification payments must be made to the Pension Benefit Guaranty Corporation (PBGC).

A new sentence added to FAR 31.201–5 provides a cross reference to the rules related to determination of the amount of refund or credit due to the Government upon termination of an overfunded defined benefit pension plan. The new cost principles coverage at FAR 31.205–6(j)(4) establishes an administratively feasible method for computing the Government's equitable share of any such adjustments of prior periods' pension costs. The new contract clause at FAR 52.215–27, applicable to certain contracts with commercial organizations as prescribed at FAR 15.804–8(e), requires a notification of intent to terminate a defined benefit pension plan and clarifies the Government's right to a refund or credit when excess assets are withdrawn from pension funds. When the new clause is included in *any* contract, it will serve as a "trigger" to initiate the process of sharing of the proceeds of a termination on a basis proportionate to the amount of pension costs absorbed by *all* Government contracts, competitive and noncompetitive, fixed price and cost reimbursement types, and small purchases and major purchases.

B. Regulatory Flexibility Act

The new coverage at FAR 31.205–6(j)(4) is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because small entities rarely establish defined benefit pension plans but instead employ other, less administratively burdensome, deferred compensation plans. Therefore, an initial Regulatory Flexibility Analysis has not been prepared. Comments are invited.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule does not impose any additional recordkeeping or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 15, 31, and 52

Government procurement.

Dated: January 28, 1987.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 15, 31, and 52 be amended as set forth below:

1. The authority citation for Parts 15, 31, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Ch. 137; and 42 U.S.C. 2453(c).

PART 15—CONTRACTING BY NEGOTIATION

2. Section 15.804–8 is amended by adding paragraph (e) to read as follows:

15.804–8 Contract clauses.

* * * * *

(e) *Termination of Defined Benefit Pension Plans.* The contracting officer shall insert the clause at 52.215–27, Termination of Defined Benefit Pension Plans, in all solicitations and contracts, unless it is contemplated that the contract will be in one or more of the following categories:

(1) Small purchases awarded under the procedures of Part 13.

(2) Contracts awarded on the basis of sealed bids.

(3) Negotiated firm-fixed-price contracts not in excess of $100,000 awarded to small businesses.

(4) Contracts in which the price is set by law or regulation.

(5) Contracts in which the price is based on the established catalog or market price of commercial items sold in substantial quantities to the general public.

(6) Contracts described in Subpart 5.5, Paid Advertisements.

(7) Nondefense contracts awarded on the basis of adequate price competition.

(8) Firm-fixed-price contracts awarded without submission of any cost data; *Provided,* That the absence of the submission of such cost data is not attributable to a waiver of the requirement for certified cost or pricing data.

(9) Contracts with educational institutions, other than those contracts to be performed by a Federally Funded Research and Development Center (FFRDC) operated by such institutions.

(10) Contracts with State or local governments, or their instrumentalities.

(11) Contracts with Government agencies.

(12) Contracts with foreign governments, or their agents or instrumentalities, and contracts with foreign concerns to be performed entirely outside the United States, its territories, and possessions.

(13) Contracts awarded to United Kingdom contractors for performance substantially in the United Kingdom.

(14) Any other exceptions authorized under agency procedures.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Section 31.201–5 is amended by adding a second sentence to read as follows:

31.201–5 Credits.

* * * See 31.205–6(j)(4) for rules related to determination of the amount of refund or credit to the Government upon termination of an overfunded defined benefit pension plan.

4. Section 31.205–6 is amended by revising the fourth sentence in paragraph (j)(2); by removing in paragraph (j)(2)(iii) the reference "(j)(6) below" and inserting in its place the reference "(j)(7) of this paragraph"; by removing paragraph (j)([3)(iv); by adding a new paragraph (j)(4); by redesignating existing paragraphs (j)(4) through (j)(7) as new paragraphs (j)(5) through (j)(8); by revising new paragraph (j)(5)(iii); by revising (j)(6)(vi); by revising the third sentence in new paragraph (j)(7); and by revising new paragraph (j)(7)(i) to read as follows:

31.205–6 Compensation costs.

* * * * *

(j) * * *

(2) * * * Pension costs are allowable subject to the referenced standards and the cost limitations and exclusions set forth below in this subparagraph and in paragraphs (j) (3) through (8) of this section.

* * * * *

(4) *Termination of defined benefit pension plans.* Termination of a defined benefit pension plan refers to a transaction in which pension benefit obligations (i.e., liabilities for vested benefits) of the plan are irrevocably settled, such as by purchasing paid-up annuity contracts or by making lump-sum cash payments to plan participants in exchange for their rights to vested benefits. Because of the unique manner in which pension costs for an accounting period are determined (i.e., the actuarial methods and techniques employed), Government recognition of such costs has always been on a basis that funding is irrevocable and that the Government will fully participate, to the extent of its fair share, in gains and losses incurred by the plan. When a pension plan is terminated, the termination value of the

liabilities of the plan, based on employee service and/or earnings through the date of termination, shall be the lesser of the amount determined under the Pension Benefit Guaranty Corporation (PBGC) valuation method, or the amount paid for an annuity contract(s) purchased to settle the plan's liabilities. When the market value of the assets exceeds the termination value of the liabilities, the residual assets are generally refunded to the contractor upon settlement of all liabilities. When the termination value of the liabilities exceeds the market value of the assets, additional funding may be required. For contract costing purposes, the funding change which results from termination of a defined benefit pension plan shall be treated in the current year as an adjustment of pension costs for accounting periods preceding the date of plan termination. Government participation in such adjustments of prior periods' pension costs shall be determined in accordance with paragraphs (j)(4) (i) through (vi) of this section.

(i) When CAS 413.50(c) requires that separate pension costs be calculated for a segment(s), or that segmented pension records be maintained, the amount of the adjustment of prior periods' pension costs shall be apportioned initially to segments based on the market value of the assets and the termination value of the liabilities applicable to each segment, and on a basis consistent with the actuarial method(s) used to compute pension costs and the accounting procedures used to allocate such costs to final objectives.

(ii) The Government's share of the adjustment of prior periods' pension costs, calculated for each segment in accordance with paragraph (j)(4)(i) of this section, shall be the product of such adjustment (net of any amount prefunded) and the ratio of pension expense absorbed by all Government contracts and subcontracts (including Foreign Military Sales) to total pension costs incurred during the 10-year period preceding the date of plan termination, or the period from the inception date of the plan being terminated, whichever is shorter. If this ratio cannot be determined readily, a surrogate for it may be used provided the contracting officer determines that it achieves an equitable result.

(iii) In order to determine the total amount of the Government's share of the adjustment of prior periods' pension costs, the share calculated in accordance with paragraph (j)(4)(ii) of this section, shall be further adjusted as follows

(A) It shall give effect to any unallowable costs included in the segment's pension liabilities immediately before termination.

(B) It shall give effect to the consequence of any delayed funding, such as when the Government vs. non-Government portions of pension plan contributions have not been funded on the same schedule, or funding has been deferred under a waiver granted under the requirements of ERISA (see paragraph (j)(3)(i) of this section).

(iv) When a participating annuity contract is used to settle pension plan liabilities, the Government's share of dividends paid to the contractor under the annuity contract in future periods shall be the product of the ratio determined in paragraph (j)(4)(ii) of this section and the dividends paid.

(v) The cost of indemnifying the PBGC under ERISA section 4062 or 4064 is allowable, provided that if insurance was required by the PBGC under section 4023, it was so purchased and the indemnification payment is not recoverable under the insurance. The Government will participate, notwithstanding the requirements of 31.205–19(f), in the contractor's indemnification payment to the PBGC to the extent of its fair share determined in accordance with paragraph (j)(4)(iii) of this section.

(vi) The contracting officer shall determine whether the amount due to the Government shall be received by refund or by credit to specific contracts. Any amount due to the Government shall be payable in full on the date of plan termination, or for dividends declared under participating annuity contracts, on the date the dividends are payable to the contractor. Interest at the rate specified by the Secretary of Treasury pursuant to 50 U.S.C. App. 1215(B)(2) shall be assessed on the amount due for the period from the date payable until the date of receipt by the Government.

(5) * * *

(iii) The provisions of paragraph (j)(4)(v) of this section concerning payments to PBGC apply to defined contribution plans.

(6) * * *

(vi) The requirements of paragraph (j)(3) of this section are also applicable to pay-as-you-go plans.

(7) * * * However, for contract costing purposes, early retirement incentive payments are allowable subject to the pension cost criteria contained in paragraph (j)(3) of this section provided—

(i) The costs are accounted for and allocated in accordance with the contractor's system of accounting for pension costs (see paragraph (j)(6)(v) of this section for supplemental pension benefits);

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.215–27 is added to read as follows:

52.215–27 Termination of Defined Benefit Pension Plans.

As prescribed in 15.804–8(e), insert the following clause:

Termination of Defined Benefit Pension Plans (Jan. 1987)

The Contractor shall notify the Contracting Officer in writing when it determines that it will terminate a defined benefit pension plan. If pension fund assets revert to the Contractor under any such termination, the Contractor shall make a refund or credit to the Government for an equitable share determined in accordance with FAR 31.205–6(j)(4). If indemnification payments must be made to the Pension Benefit Guaranty Corporation (PBGC) under any such termination, the Government's share of such payments shall be determined in accordance with FAR 31.205–6(j)(4)(v). The Contractor shall include the substance of this clause in all subcontracts under this contract, except for those types of contracts specified in FAR 15.804–8(e).

(End of clause)

[FR Doc. 87–2612 Filed 2–6–87; 8:45 am]

BILLING CODE 6820–61–M

---

48 CFR Parts 45 and 52

Federal Acquisition Regulation (FAR); Definition of Special Test Equipment

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR 45.101, Definitions, and FAR 52.245–18, Special Test Equipment clause, to provide a clearer statement of what constitutes special versus general purpose test equipment.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before April 10, 1987, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General

Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 86–68 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

This proposed regulation does not have a significant effect beyond the internal operating procedures of the Federal Government and is therefore not required to be published for public comment. However, any comments received will be considered in the formulation of a final rule. Because these proposed changes are not required to be published for public comment, the Regulatory Flexibility Act does not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule does not impose any additional recordkeeping or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 45 and 52

Government procurement.

Dated: January 30, 1987.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 45 and 52 be amended as set forth below:

1. The authority citation for Parts 45 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Ch. 137; and 42 U.S.C. 2453(c).

PART 45—GOVERNMENT PROPERTY

45.101 [Amended]

2. Section 45.101 is amended by adding in the second sentence of the definition "Special test equipment" the words ", including standard or general purpose items or components," following the word "equipment".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.245–18 is amended by inserting in the introductory text a colon following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the words "(APR 1984)" and inserting in their place the words "(FEB 1987); by revising paragraph (a) of the clause; and by removing the derivation line following "(End of clause)" to read as follows:

52.245–18 Special Test Equipment.

* * * * *

(a) "Special test equipment," as used in this clause, means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment, including standard or general purpose items or components, that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.

* * * * *

[FR Doc. 87–2611 Filed 2–6–87; 8:45 am]

BILLING CODE 6820–67–M

federal register

Monday
February 9, 1987

Part III

Department of Health and Human Services

Office of Community Services

Availability of Funds and Requests for Applications Under the Office of Community Services Discretionary Authority; Notice of Announcement

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS-87-1]

Availability of Funds and Requests for Applications Under the Office of Community Services Discretionary Authority

AGENCY: Office of Community Services, Family Support Administration, Department of Health and Human Services.

ACTION: Announcement of availability of funds and requests for applications under the Office of Community Services Discretionary Authority.

SUMMARY: The Office of Community Services (OCS) announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under section 681 of the Community Services Block Grant Act of 1981, as amended. This program announcement consists of five parts. Part I covers general information, who is eligible to apply, what funds are available, the overall purposes of the OCS Discretionary Grants Program and the funding authority, and briefly describes the Fiscal Year 1987 competitive review process. Part II describes the program priority areas in which grants will be awarded. Part III describes the application process and the review and selection criteria. Part IV gives specific guidance on how to prepare and submit an application under each separate published program priority area. (Applications must be limited to no more than 60 single-spaced typed pages.) Part V provides instructions for completing applications.

DATE: The closing date for submission of applications is April 10, 1987. Applicants may meet this deadline either by delivering or mailing the application on or before April 10, 1987, in accordance with the detailed instructions in Part IV below. Late applications will be returned to the senders without consideration in the competition.

FOR FURTHER INFORMATION CONTACT: Office of Community Services, Family Support Administration, Division of Discretionary Grants, 200 Independence Avenue, SW., Room 425B, Washington, DC 20201, (202) 475-0396.

Part I—Overall Guidance

A. Scope of This Program Announcement

Section 681 of the Community Services Block Grant (CSBG) Act authorizes the Secretary of Health and Human Services to make funds available to support program activities of national or regional significance to alleviate the causes of poverty in distressed communities. Included are special emphasis programs which sponsor enterprises providing employment and business development opportunities for low-income residents of the community, technical assistance and training programs in rural housing and community facilities development, and assistance for migrants and seasonal farmworkers.

Eligible Applicants

In accordance with the CSBG Act, as amended, eligible applicants in the Urban and Rural Community Economic Development Program Priority Area must be "private, locally initiated, nonprofit community development corporations, (or affiliates of such corporations) governed by a board consisting of residents of the community and business and civic leaders." (Note: This is a change from prior years based on a legislative amendment contained in the Human Services Reauthorization Act of 1986.) In each of the other Program Priority Areas (Assistance in Rural Housing Repairs and Rehabilitation, Rural Community Facilities Development, and Assistance to Migrants and Seasonal Farmworkers) eligible applicants may be States, public agencies or private non-profit organizations.

Projects proposed for funding under this announcement must result in direct benefits targeted toward low-income people (including at-risk teenagers) as defined in the most recent Annual Revision of Poverty Income Guidelines, published in the **Federal Register**, Vol. 51, No. 28, dated February 11, 1986, pp. 5105–5106, which is appended to this announcement. Annual revisions of these guidelines are normally published in February or early March of each year and are applicable to projects being implemented at the time of publication. (These revised guidelines may be obtained through the U.S. Government Printing Office at the following address: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.) No other government agency or privately defined poverty guidelines ar applicable for the determination of low-income eligibility for this OCS Discretionary Grants Program.

For most projects, the OCS will grant funds for one year. However, depending on the characteristics of any individual project and the justification presented by the applicant in its proposal, a grant may be made for a longer period of time, i.e. up to two years. Regardless of the time provided in a grant, it must be clearly demonstrated that the project work plan will achieve measurable results and can be successfully completed within the funding period provided in the particular grant.

The Fiscal Year 1987 program will be conducted under the same basic policies established in previous years for the OCS Discretionary Grants Programs including the awarding of grants on a competitive basis.

The OCS policy direction for discretionary grants is to promote:

1. Full-time permanent jobs for poverty level project area residents;
2. Income and/or ownership opportunities for low-income community members;
3. A better standard of living for low-income individuals through technical assistance and training projects in the areas of water and waste-water treatment;
4. Better housing for low-income individuals through technical assistance projects and innovative methods of meeting the housing needs of the poor; and
5. Implementation of projects which provide crisis relief, upgraded employment skills, and improved housing including projects proposing new and innovative strategies for addressing the special needs of migrants and seasonal farmworkers.

The OCS believes that these policy objectives can be best met at the local level through local organizations that can coordinate linkages with other private and public sector initiatives and enhance private sector involvement.

For purposes of this Program Announcement, a "distressed community" is defined as a geographic urban neighborhood or rural community of high unemployment and pervasive poverty.

Available Funds

The Office of Community Services expects to award approximately $24,000,000 in the fourth quarter of Fiscal Year 1987 for new grants. The funding expected to be available for each program priority area is summarized below:

Funding Summary

Program priority area	Fiscal year 1987 funds
1.0 Urban and Rural Community Economic Development	$17,614,000
2.0 Rural Housing and Community Facilities Development	3,570,000
3.0 Assistance for Migrants and Seasonal Farmworkers	2,686,000

B. Application Prerequisites

All proposed projects must meet the basic criteria of (a) being projects that are designed and intended to provide benefits to a targeted low-income group of people and (b) including matching funds from other sources sufficient to meet the requirements of this grant announcement. [Note exception: Matching requirements do not apply to applications submitted under Program Priority Area 1.2, Urban and Rural Community Economic Development (Pre-Developmental Grants)].

The OCS will not consider applications that are geared toward the establishment of Small Business Investment Corporations or Minority Enterprise Small Business Investment Corporations. The OCS, in Fiscal Year 1987, will consider grant applications for the purpose of establishing revolving loan funds where they are part of an applicant's business or commerical development activities under Priority Area 1.1, Urban and Rural Community Economic Development (Operational Grants).

C. FY 1987 Application Process

All instructions and forms required for submittal of applications under the OCS Discretionary Grants Program are included in this program announcement. (The information collection requirements contained in this announcement have been approved by the Office of Management and Budget under control number 0990–0147.) Additional copies of this announcement may be obtained by writing or telephoning the Division of Discretionary Grants, Office of Community Services, at the address and phone number listed above.

All timely applications initially will be screened by FSA staff to determine whether they are complete and in conformance with the requirements of this announcement using the screening factors contained in Part III of this announcement. Those applications which pass this screening will be given further consideration by referral to independent readers for scoring and analytical comment based upon the criteria detailed in Part III of this announcement and the specific requirements contained under each published program priority area. Following the final review by the Director of OCS and staff, it is anticipated that awards under this announcement will be made in the fourth quarter of Fiscal Year 1987.

D. General Grant Terms

1. Applicants are reminded that grantees are subject to the provisions of Office of Management and Budget Circular A–122 which prohibits the use of grant funds for (a) electioneering activities at the Federal, State or local level and (b) attempts to influence Federal or State legislation through either grassroots lobbying or direct contacts with Federal or State legislators or their staffs.

2. Applicants are reminded that quarterly progress and financial reports, as well as an audit, will be required for any project that receives OCS funds. Costs associated with the completion and submission of the required grant audit may be chargeable to the grant and will not be considered as part of the up to 10% of the grant that is allowable for administrative costs.

Part II—Program Priority Areas

A. Priority Area 1.0: Urban and Rural Community Economic Development

The purpose of this priority area is to encourage the development of special programs by which private, locally initiated, nonprofit community development corporations, (or affiliates of such corporations) governed by a board consisting of residents of the community and business and civic leaders, which serve economically depressed urban and rural areas and/or State designated enterprise zones, may with appropriate Federal assistance, initiate projects intended to provide employment and business development opportunities and generally improve the quality of the economic and social environment of low-income residents of the areas they plan to serve. It is intended to provide resources to eligible applicants, but also has the broader objectives of arresting tendencies toward dependency, chronic unemployment, and community deterioration in urban and rural areas. The emphases of projects must be on self-help and mobilization of the community-at-large and on providing opportunities for employment and/or ownership within the targeted population. To this end, the program seeks: (a) To attract additional private capital into distressed communities, including enterprise zones; (b) to build and expand the ability of local institutions to better serve the economic needs of local residents; and (c) to provide new employment and ownership opportunities for low-income people through business, physical or commercial development.

1. Priority Area 1.1: Urban and Rural Community Economic Development (Operational Grants)

a. *Narrative description.* The Office of Community Services will provide funds to a limited number of non-profit community development corporations (or affiliates of such corporations) for business development activities at the local level. Funding under this Program Priority Area will be provided for specific projects with up to 10% allowed for administrative purposes and will require the submission of business or community development proposals that meet the test of economic feasibility.

Projects must further Administration goals of public-private partnerships, and Federal initiatives such as urban and rural enterprise zones. OCS is particularly interested in receiving applications that stress public-private partnerships that are directed toward the development of economic self-sufficiency through a focus on economic expansion.

Applications must show significant ability to create new permanent private sector jobs and/or maintain existing jobs, all targeted towards the poverty level area residents, including at-risk teenagers, who are either unemployed or underemployed. While projected employment in future years may be included in the application, it is essential that the focus of employment projections concentrate on those jobs saved or created during the duration of the OCS grant period. The description of employment must include a discussion of the types of jobs noting those created or saved, a discussion of skill requirements and training plans (if any), any upward mobility potential and the wage structure that will be characteristic of the project. It also must indicate how the applicant intends to insure that low-income area residents will be targeted for jobs that will be created or saved as a result of the OCS grant award.

Any funds that are proposed to be used for training purposes must be limited to providing specific job related training to poverty level individuals who have been selected for employment in the grant-supported project or who have been selected for training or participation in a project where potential jobs have actually been identified.

Investments in projects which would result in the relocation of a business from one geographic area to another are discouraged.

Applicants located in a State designated enterprise zone in which a legislative entity has enacted a program of tax and regulatory relief to encourage business development, are encouraged to submit applications. Such applications must be linked with and complement enterprise zone initiatives, and may be for either a business development project or for a demonstration of innovative ways of involving the poverty community in the implementation of the enterprise zone concept.

b. *Submission requirements.* Although applicants may submit more than one application for OCS funding under this Priority Area, each application must be a request for grant support for only one project. Single applications requesting grant support for more than one project may be disqualified and returned.

Project narratives should contain a full and accurate description of the proposed use of the requested financial assistance, whether it is for a business enterprise or a physical or commercial development project. The project narrative must show how increased employment, income and/or ownership opportunities will be provided by the proposed project. The applicant must also clearly document an ability to strengthen links with and mobilize additional resources from other private and public sources. Evidence of a commitment on the part of the public or private sector to participate in the proposed project must be fully documented.

Each application submitted under this program priority area must include a complete Business Plan as a part of its project narrative that is in Part IV of the SF 424. The format of such plans may be found in Part V. of this announcement.

The Business Plan is one of the major components in the required project narrative that will be evaluated by OCS in terms of feasibility and community benefits. Therefore, the Business Plan must be well prepared and address all the major elements of a business plan as detailed herein. The use of these guidelines should produce a complete and professional business plan of not more than 30 pages that makes an orderly presentation of the facts as required by this program announcement. It must include clearly defined quarterly goals for the project.

The Business Plan is to be a part of the application proper and will be included in the application's 60 page limitation.

The Business Plan must demonstrate to OCS that there is reasonable assurance that the amount of OCS funds requested, together with other funds available, is adequate for the completion of the proposed project or achievement of the stated purposes for which the OCS grant funds are being requested.

Because the Business Plan guidelines are written to cover a variety of possibilities, rigid adherence to them is neither possible nor necessarily desirable for all projects. For example, a plan for a service business would not require a discussion of manufacturing or product design. Common sense should be used in applying the guidelines to develop a business plan for the project.

Applicants that do not include a Business Plan as part of their application may be found to be non-responsive and their application may be disqualified and returned to them.

Any applicant applying under this priority area must document previous involvement in substantial economic development activities and a record of successful project implementation which justifies a high degree of confidence that the proposed project will succeed. Therefore, applicants in this priority area must document a firmly established and quantifiable performance record that shows the following:

- The ability to implement major activities such as (a) business development, (b) commercial development, (c) physical development, or (d) financial services;
- To mobilize dollars from such sources as (a) the private sector (corporations, banks, etc.), (b) foundations, (c) the public sector, including State and local governments, or (d) individuals;
- Successful working relationships within the community including public officials, financial institutions, corporations, other community organizations and residents;
- A sound asset base and organizational structure in terms of (a) net worth, (b) management stability, and (c) organizational capability;
- An ability to develop and maintain a stable program in terms of business, physical or community development activities that will provide needed permanent jobs, services and other benefits to community residents, and impact on community-wide economic problems and needs;
- A qualified and demonstrably competent staff and a functioning board of directors that consists of residents of the community and business and civic leaders, that are capable of setting policy, making program decisions, and providing adequate programmatic oversight;
- Sound administrative and fiscal systems and controls; and,
- The ability to establish and maintain partnerships with the private sector in such forms as financial support, volunteerism, or executives on loan.

2. Priority Area 1.2: Urban and Rural Community Economic Development (Pre-developmental Grants)

OCS intends in this priority area to provide funds to recently-established private, non-profit community development corporations (CDCs) or affiliates of such corporations (see Part I, Section A, Eligible Applicants) which propose to undertake economic development activities in distressed communities currently not served by a community development corporation.

OCS recognizes that there are a number of newly-organized non-profit community development corporations who have identified needs in their communities but who have not had the staff or other resources to develop projects to address those needs. This lack of resources also might be affecting their ability to compete for funds, such as those provided under OCS's Urban and Rural Community Economic Development (Operational Grants) since their limited resources would preclude them from developing a comprehensive business plan and/or mobilizing resources.

OCS has an interest in providing support to these new entities in order to enable them to become more firmly established in their communities thereby bringing technical expertise and new resources to these previously unserved or underserved communities. Therefore, OCS is setting aside $1.5 million in Fiscal Year 1987 for grants to private non-profit community development corporations or affiliates of such corporations which have been in existence for no more than three years and have never received OCS funding. From this sum grants of up to $75,000 each will be made to eligible applicants.

These grants will be made for a period of one year and will not require matching funds.

The grants will be pre-developmental grants under which CDCs or their affiliates may incur costs to: (1) Evaluate the feasibility of potential projects which address identified needs in the low-income community and which conform to those projects and activities allowable under Priority Area 1.1, subsection a., Narrative Description; (2) develop a Business Plan related to one

of those projects; and (3) mobilize resources to be contributed to the project.

Based on the availability of funds in Fiscal Year 1988, OCS would propose to include in its Fiscal Year 1988 Program Announcement a separate Priority Area with a set-aside of $2.5 million to competitively fund some of the projects designed with the Fiscal Year 1987 pre-developmental grant funds. Grants would be for a maximum of $250,000 and competition for those funds would be restricted to those organizations receiving Fiscal Year 1987 pre-developmental grants. The Business Plan developed as part of the pre-developmental grants would be submitted as part of the competitive application. There would be a matching requirement in Fiscal Year 1988 and it would be the same as that required for Priority Area 1.1.

Each application for Fiscal Year 1987 funding under this Priority Area must include the following as part of the project narrative in Part IV of the SF 424:

1. Description of the impact area, i.e. a description of the low-income area it proposes to address;
2. analysis of need in the distressed community;
3. project objectives and measurable impact, i.e. a discussion of the types of projects that might be implemented to address the identified needs and how the proposed projects relate to the applicant's organizational goals and previous experience (if any); and
5. implementation factors: quarterly work plans with specific task timelines.

B. Priority Area 2.0: Assistance for Rural Housing and Community Facilities Development

The purpose of this Priority Area is to target funds in a limited number of low-income rural communities to address two major needs: Assistance in Housing Repair and Rehabilitation and Water and Waste Water Treatment.

Under this OCS Discretionary Grants Program, the eligibility guidelines for participation are the Annual Revision of Poverty Income Guidelines published by the Department of Health and Human Services with the most recent edition being dated February 11, 1986. No other low-income guidelines, such as those used by HUD or FmHA, may be used to determine participant eligibility. All applications must state in detail what criteria were used by the applicant to determine participant eligibility.

For purposes of this section, *rural* is defined as any area that is not within the outer boundary of a metropolitan entity having a population of 25,000 or more and the contiguous communities with population density of 100 persons or more per square mile according to the latest decennial census. Such an entity may be located entirely within one State or made up of contiguous interstate communities.

1. Priority Area 2.1: Assistance in Rural Housing Repairs and Rehabilitation

The primary purpose of this priority area is to assist low-income residents in rural communities by providing grants to eligible entities to: (a) Provide technical assistance to help low-income families and individuals to more effectively utilize existing local, State and Federal housing assistance programs; (b) develop innovative ways to meet the housing needs of low-income people, e.g. the rehabilitation or repair of existing substandard housing units for occupancy by low-income residents, the conversion of non-residential buildings to low-income residential use, and the purchase of homes by low-income people. OCS encourages applications that will assist low-income homeowners to improve their housing through self-help rehabilitation. These efforts should not be duplicative of programs which can be funded through other existing Federal programs.

Applications calling for new construction or "gut" rehabilitation will only be considered if the application clearly documents that there is insufficient existing housing stock that can be economically rehabilitated.

Funds will not be available for the repair or rehabilitation of low-income rental housing unless the structure is either occupied by a low-income owner or the properties to be repaired are (a) owned by a private non-profit organization and (b) covered by a written agreement which will ensure continued occupancy for at least three years by low-income people, as defined by DHHS Poverty Income Guidelines noted above. Such applications must state the current rents for the units in question as well as what rents will be charged for the rehabilitated units.

Funds will not be made available under this program priority area for establishing or expanding a revolving loan fund.

OCS will consider applications from such entities as rural housing development corporations, cooperatives and other public and private organizations with proven accomplishments in the area of rural housing.

Proposals should fully describe how the proposed use of grant funds will result in tangible improvements and benefits for rural poor people in housing conditions such as the following:

—Interior or exterior structural repairs including weatherization and alternative energy systems;

—Job opportunities for local unskilled residents while assuring quality work;

—Technical assistance and professional services related to housing and community planning by community-based design and planning organizations. (Projects should be conducted with maximum use of voluntary services of professional and community personnel);

—Development of innovative housing strategies to help low-income rural residents acquire housing.

Each applicant must include in Part IV, Program Narrative of the SF 424, a full discussion of the project including the following sections:

—*Basic housing data for targeted area.* Information on the status of housing in the targeted area, including but not limited to vacancy rates, housing deficiencies, characteristics of housing units to be repaired, new construction inventory, property values, rents and mortgage rates. (While specific census data may be included, this information must be project specific.)

—*Analysis of needs/priorities.* The nature and extent of the problem(s) to be addressed by the project with adequate description and documentation identifying specific housing needs of the rural poor in the area targeted and a rationale for the strategies and priorities for which OCS support is requested.

—*Participant application process.* A description of the participant application process including: (a) Verification of participant need and income eligibility, (b) proposed diagnostic repair forms and contract bid procedures (where applicable), and (c) completion verification and quality workmanship assurance procedures.

—*Types of work to be performed.* The application must contain a detailed and specific work plan that is both sound and feasible. It must include quantitative and qualitative measures which reflect the types of work to be performed, e.g. (a) technical assistance and training for each proposed organization/community; and/or (b) repairs or rehabilitation or construction work, noting which types of work will be done in order to bring properties up to minimum housing standards, inspection procedures and construction schedules.

—*Job creation.* Data regarding the number of direct jobs that will be created in the proposed project, noting

the number of low-income residents that will be trained and/or placed in these jobs.

2. Priority Area 2.2: Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)

The purpose of this priority area is to help low-income rural communities develop the capability and expertise to establish and maintain or preserve affordable, adequate and safe water and waste water treatment facilities.

The OCS will consider applications from Regional Technical Resource Centers and public or private organizations with proven technical expertise and accomplishments in water and waste water treatment programs. In accordance with the authorizing legislation, funding priority will be given to private nonprofit organizations that, before the date of the enactment of the Human Services Reauthorization Act of 1986, carried out such programs under the authority found at section 681(a)(2)(D) of the CSBG Act.

Non-profit organizations applying under this program area must include in their board membership or in an advisory body a significant representation of low-income community residents to ensure that project efforts are meeting the needs of low-income people in the areas served and to meet the program objective of helping rural low-income communities to develop expertise in the overall management of water and waste water systems.

Each applicant must include in Part IV of the SF 424, a full discussion of how the proposed use of funds will result in preservation of the quality of water and waste water treatment systems for the rural poor, or tangible improvements and other benefits such as;

—Dissemination of information on water and waste water programs serving rural communities;

—Increased local expertise and capability in water and waste water development and engineering services;

—Assistance to rural communities in developing the capability to operate and manage water and waste water facilities; and

—Better coordination of Federal, State and local water and waste water program financing and development to assure improved service to rural communities.

While matching funds may be used for construction of water and waste water treatment systems or for operating subsidies for such systems and for individual home hook-ups (ECUs), OCS funds may not be used for these purposes. Applicants that define measurable benefits in terms of equivalent connection units (ECUs) should report the actual number of connection units to be completed during the grant program year as well. Applicants should coordinate projects with the Farmers Home Administration (FmHA) and other Federal and State agencies to ensure that funds for hardware for local community projects are available.

C. Priority Area 3.0: Assistance to Migrants and Seasonal Farmworkers

The purpose of this priority area is to fund a limited number of projects which focus exclusively on the problems and special needs of migrants and seasonal farmworkers in order to improve their quality of life and advance self-sufficiency.

The following are definitions of terms for purposes of this section:

A migrant farmworker means an individual who works in agricultural employment of a seasonal or other temporary nature and who is required to be absent from his/her permanent place of residence in order to secure such employment.

A seasonal farmworker means an individual who works in agricultural employment of a seasonal or other temporary nature but is able to remain at his/her place of permanent residence while employed.

Special consideration will be given to projects that emphasize the involvement of the private sector in addressing the unique problems of migrants or seasonal farmworkers, with priority afforded to migrant farmworkers since local commuting farmworkers have greater access to other social services and poverty programs.

OCS will entertain proposals that directly meet farmworker needs in such areas as crisis nutritional relief, the development of self-help systems of food production, emergency health and social services referral and assistance, and activities in the areas of home repair, rehabilitation, and ownership.

Applicants may also request funding to address the need for longer term and permanent employment and may submit proposals that aim to:

(a) Assist low-income farmworkers (including at-risk teenagers) directly in improving their job skills so as to qualify them for longer term and permanent full-time employment in agriculture, and/or;

(b) Assist low-income farmworkers, including at-risk teenagers, who wish to leave agricultural employment and find jobs in other lines of work.

Applications submitted under this discretionary grant priority area must not request OCS funding for projects that would duplicate CSBG funding or activities for which funding can be requested from other Federal agencies such as Department of Labor, the Department of Agriculture's Food and Women, Infants and Children (WIC) programs, etc. However, programs designed to expand existing Federally-sponsored activities in isolated geographical regions will be considered favorably.

Part III—Application Process

A. Number of Grants and Amounts

The OCS anticipates making approximately 90 new awards pursuant to this announcement.

In Fiscal Year 1987 OCS will provide no more than $500,000 or 25% of the total project costs, whichever is the lesser amount, for real estate projects under Priority Area 1.1 and strongly encourages other applicants for funds under this Priority Area to refrain from submitting requests that are for more than $500,000. In Priority Area 1.2 requests may not exceed $75,000 and in Priority Areas 2.0 and 3.0 applicants are strongly encouraged not to apply for funds exceeding $250,000.

Projects to be funded under this authority will normally be for a period of twelve months, but projects may be approved, at the discretion of the funding agency for longer (but not to exceed two years) or shorter periods, depending on the characteristics of any individual project and the justification presented by the applicant in its proposal.

If a project is intended to continue beyond the OCS grant expiration date, the applicant must demonstrate that it will be able to continue project operations with other sources of funding.

B. Administrative Costs

The OCS will accept applications that include administrative costs. However, since grant funds are extremely limited, no awards for only administrative costs will be made and no more than 10% of the OCS discretionary funds awarded under a single grant may be used for administrative purposes. More favorable consideration may be given to applications where administrative costs are less than 10% of total project funds from all sources.

Administrative costs are defined as costs that are necessary to protect, monitor, properly account for and apply to the approved project, those Federal funds awarded. Costs associated with the internal operational management of

the approved project are not considered to be administrative costs. Administrative costs must be identifiable within grantee records in order to allow auditors and OCS to verify that the grantee has not exceeded the 10% administrative cost limitation.

In all cases where an applicant has been awarded and claims a current indirect cost rate approved by the Department of Health and Human Services, the Defense Contracting Agency, or some other Federal Agency, this rate should be documented in the application and will ordinarily be recognized by OCS and applied to any OCS grant award. However, it is understood that both administrative and indirect costs are part of and not in addition to the amount of funds awarded in the subject grant. (In most cases, the indirect cost rate approved will include not only administrative costs but also other allowable costs that were negotiated under the grantee's approved indirect cost rate. Therefore, applicants with applicable indirect cost rate exceeding 10% may not propose any administrative funds in excess of that rate. Thus, the approved indirect cost rate may often exceed the normal 10% administrative cost restrictions which otherwise apply to OCS discretionary grants. In such cases, the entire approved indirect cost rate will be accepted.)

C. Matching Funds Requirement

Except for an applicant applying under Program Priority Area 1.2, the applicant is required to obtain commitment of minimum prescribed amounts of private or public funds as noted below to match each OCS dollar awarded. This match must be either one private sector dollar or two public sector dollars to each dollar of OCS discretionary funds awarded in Priority Areas 1.1, 2.1 and 2.2. For projects submitted under Program Priority Area 1.2 there is no match requirement. For projects submitted under Program Priority Area 1.2 there is no match requirement. For projects submitted under Program Priority Area 3.0, Assistance to Migrants and Seasonal Farmworkers, and for any project which will be carried out on an Indian Reservation (regardless of which Program Priority Area it is submitted under), a match of one private or public sector dollar to each dollar of OCS discretionary funds awarded is acceptable. The firm commitment of these required matching funds must be documented in the project application. Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/institution(s) from which the funds will be received.

Matching funds must be definite, or contingent only on receipt of the OCS grant. Speculative match, or match based on independent contingencies (such as receipt of another grant or lines of credit at the current market rate set aside by banks for program participants) will not be counted towards the matching requirement.

Matching funds may be in such forms as loans for construction financing, mortgages, grants from other Federal sources, or from States, counties, municipalities or private individuals or organizations or equity investments that are made to the project supported by the OCS grant. Matching funds might also be in the form of correlated training programs, related water or waste water installations, foundation support, private and charitable contributions and/or in-kind contributions.

In-kind matching contributions must show the bases for computation by indicating such data as: (a) The number and types of volunteers and rates at which their services are valued, (b) the value of donated space or equipment, noting rental value, use charges, square feet, etc., and/or the fair market value of any property or equipment that is specifically part of the project.

Funds that are eligible to be counted as "matching" funds must be committed for specific project activities within the OCS approved project during the duration of the OCS grant. A grantee may not claim as matching funds wages earned as a result of training or skill improvements that are expected to come from the OCS funded project.

Funds expended or obligated prior to the approved OCS starting date for a grant cannot be considered as matching funds, although currently owned assets may be applied against the matching requirement.

Applicants should describe clearly how they plan to use their own resources and the requested OCS funds to generate additional private sources of funding or investment as well as funding from other government agencies.

While the above matching requirement must be met and documented for an application to be eligible for consideration, applicants generating support greater than that required, may be eligible for additional points to be awarded by the independent readers.

Documentation of any commitment of matching funds must be valid at least through September, 1987.

D. Application Procedures

Organizations wishing to compete for an award under this announcement must submit an application by April 10, 1987. Any application not received, postmarked or identified by a commercial carrier processing date by the above closing date will be disqualified and returned to the applicant.

1. Availability of Forms

Applications for awards under the OCS Discretionary Program must be submitted on Standard Form (SF) 424 provided for that purpose. Part V and Appendix B contain all forms and instructions required for submittal of applications. Additional copies of the announcement may be obtained by writing or telephoning:Family Support Administration, Office of Grants Management, Room 2222—Switzer Building, 330 C Street, SW., Washington, DC 20201, Attn: OCS 87-1-DP, Telephone: (202) 245-0323.

2. Application Submission

An original signed application and six copies must be submitted to the Office of Community Services at the above address.

The application cover must contain a Program Priority Area designation in the lower right hand corner. The following Program Priority Area designations must be used:

UR (OG)—for Urban and Rural Community Economic Development (Operational Grants)
UR (*PD*)—for Urban and Rural Community Economic Development (Pre-developmental Grants)
RH—for Rural Housing Repairs and Rehabilitation,
RF—for Rural Community Facilities Development,
MS—for Migrants and Seasonal Farmworkers projects.

3. Table of Contents

All applications must include, as the first item, a Table of Contents with page numbers noted for each major section and subsection of the proposal and each section of the appendices. Each page in the application, including those in all appendices, must be numbered consecutively. (This will facilitate review as well as future referencing once the application becomes part of the Agency's permanent files.)

The Table of Contents should list the following and the application should present material in the order herein noted:

a. Executive Summary (not to exceed 5 single-spaced typewritten pages).

b. Standard Form 424, Parts I through III, accompanied by:

(1) Justification for indicating in Part I a grant period exceeding 12 months.

(2) A Detailed Budget Breakdown for Part III, Section B,

(3) Documentation of Required Matching Funds (if applicable), and

(4) Evidence of Applicant Support from other Government and/or private sources.

c. Narrative Description of project applicant and implementing organizations (if grant is to be implemented by an organization other than the entity which is making application to OCS), must include, at a minimum, the following:

(1) Organizational Experience in Program Area,

(2) Management History,

(3) [1] Staffing, (Organizational Chart, Job Descriptions, Resumes),

(4) Senior Staff Responsibilities (including definite statements of who will have the responsibilities of the chief executive officer and who will be responsible for grant coordination with OCS),

(5) [1] Articles of Incorporation and By-laws,

(6) [1] Governing Boards and Representational Structure.

d. Description of Impact Area

(1) Standard Demographic Data,

(2) Participant/Beneficiary Characteristics,

(3) Analysis of Need.

e. Project Implementation

(1) Project Objectives and Measurable Impact,

(2) Implementation Factors: Resource Coordination, Quarterly Work Plans with Specific Task Timelines, Financial/Business Plans (where applicable), Identification of Problems and Issues, etc.

f. Evaluation Component.

Applications must be uniform in composition. They must be submitted on 8½ × 11 inch paper only. They must not include colored, oversized or folded materials. (Please do not include organizational brochures or other promotional materials in the proposal unless they have been copied to conform with the size requirements noted above.)

Please submit applications in binders that will allow for easy separation and reassembly. While applications must be comprehensive, OCS encourages conciseness and brevity in the presentation of materials and cautions you to avoid unnecessary duplication of information.

Failure to comply with the above formatting requirements may result in disqualification and return of an application.

4. Intergovernmental Review

The OCS Discretionary Grants Program is covered by Executive Order 12372 which provides for review of proposed Federal assistance by State and local governments.

Therefore, applicants for funds under this announcement are subject to the clearance procedures and requirements established by the State(s) in which their projects will be conducted. Consequently, applicants are reminded that clearance action through appropriate State clearinghouses must be initiated by them prior to submittal of applications to OCS. These initial actions must be reported on the SF 424, Page 1, which is submitted to OCS. Clearance action by States need not be completed before applications are submitted to OCS.

5. Application Consideration

Complete applications that conform to the requirements of this Program Announcement will be reviewed competitively and evaluated by Federal officials and qualified independent readers. Each complete application will be referred to qualified independent readers for a numerical score and explanatory comments based solely on responsiveness to program priority area guidelines and review criteria published in this announcement. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Evaluation scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will generally be considered in order of the mean scores assigned by reviewers. However, highly ranked applications are not guaranteed funding.

The Director may also consider other factors deemed relevant including, but not limited to comments of independent readers and State and local officials; staff evaluation and input; geographical distribution of funding; the previous program performance of applicants, especially those that have had previous HHS grants; audit reports and investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants.

The OCS reserves the option of discussing applications with other Federal or non-Federal funding sources to determine the applicant's performance record.

The official award document is the Notice of Grant Award which sets forth in writing to the recipient the amount of funds awarded, the purpose of the award, other terms and conditions of the award, the effective date of the award, the budget period for which support is given, the total project period for which support is contemplated and the total recipient financial participation required.

E. Criteria for OCS Screening and Review of All Applications

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only complete and conforming applications will then be reviewed and evaluated competitively.

1. Screening Requirements

In order for an application to be processed under this announcement, it must meet all of the following requirements:

a. It must not exceed 60 pages in total, including the Business Plan (not to exceed 30 pages) and the Executive Summary (not to exceed 5 pages), but appendices may be in addition to the 60 page limitation.

b. *Standard Form 424:* The application must include a SF 424, completed according to instructions. Item 23b of Part I of this form must be signed by an official of the applicant organization having authority to obligate the applicant legally.

c. *Number of copies:* A signed original application and six copies must be submitted.

d. *Executive Summary:* A narrative summary of the project, not to exceed five single spaced typed pages, must be included in each application, immediately following the table of contents. This summary must directly address the program specifics within this announcement and the evaluation criteria contained below. (Applicants are cautioned that OCS will not accept a 5 page executive summary as the complete application or as a substitute for a properly detailed Part IV, Program Narrative of the SF 424.)

e. *OCS' Priorities:* Except for applications submitted under Priority Area 1.2, an application may contain only one project and this project must be identified as responding to one of the program priority areas stated in the announcement. An application which does not identify one program priority area or which shows multiple program

[1] These items may be included as appendices to the project proposal.

priority areas, will be deemed non-conforming and may be disqualified and returned to the applicant.

f. *Multiple Submittals:* A project can only be proposed once under this announcement. Multiple submittals of the same—or essentially the same—project as an application under different priority areas will be deemed non-conforming and may be disqualified and returned to the applicant.

g. *OCS Target Populations:* The application must clearly target the specific outcomes and benefits of the project to low-income participants and beneficiaries eligible under the DHHS Annual Revision of Poverty Guidelines.

h. *Match Requirements:* A match of one contributed private sector or two public sector dollars to each OCS discretionary dollar sought must be documented for all program priority areas, except Priority Area 1.2, Urban and Rural Economic Development (Pre-developmental Grants), Priority Area 3.0, Assistance to Migrants and Seasonal Farmworkers, and any Priority Area where the project will be carried out on an Indian Reservation. There is no match requirement for Priority Area 1.2. The match requirement for Priority Area 3.0 and projects on Indian Reservations is one private or public sector dollar to each OCS dollar.

i. *Project Implementation—Program Priority Areas 1.1 and 1.2:* OCS does not anticipate approving grants that will subsequently be subgranted to an unrelated entity.

j. *Support from other Government Agencies or Private Institutions:* Each applicant must provide a list of all financial assistance (loans, loan guarantees, grants, contracts, cooperative agreements or other investment assistance) received from any government agency (Federal, State or local), private institution or individual during the three-year period beginning January 1, 1984 and ending December 31, 1986. In cases of applicants which are units of government (e.g. a city or county) which receive extensive assistance from many sources, the funding history need be only for that office or agency which is actually conducting the activities for which the OCS grant is being requested. The list must include the title of the project for which assistance was received, the name and address of the governmental agency, private institution or individual which provided the assistance and the name and telephone number of the responsible official or program officer, within the grantor agency or institution, who administered the assistance. The list should be certified by the applicant as accurate and complete. Where no assistance has been received during the three year period, the applicant must specifically so certify.

Special Note.—Failure to include the above information by the deadline for submission of an application may disqualify the applicant from further consideration. In addition, should OCS discover that the applicant has omitted or distorted any information submitted as part of its application, it may be grounds for no further review of the application or for the recovery of any grant award already made.

APPLICATIONS MUST MEET ALL OF THE ABOVE REQUIREMENTS TO BE CONSIDERED FOR FUNDING.

2. Criteria for Review and Evaluation of Applications Submitted Under Priority Areas 1.1, 2.1, 2.2, and 3.0

Applications which are judged to be in complete compliance with the announcement will be reviewed on a competitive basis. The OCS will use qualified independent readers, other than OCS employees, to conduct a formal objective review of the applications.

Each reader will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this notice. An overall rating will include the reader's judgment of each application. The readers will be instructed to assign one of the following ratings to each application consistent with the points given under the evaluation criteria: (a) Not recommended for funding; (b) recommended for funding with conditions; or (c) unconditionally recommended for funding.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained under each program priority area.

a. Criterion I: Organizational Capability and Capacity (Maximum: 20 points)—(1) *Organizational experience in program area (sub-rating: 5 points).* Each applicant must document competence in the specific program priority area under which an application is submitted. Where the applicant has a history of two or more years of prior achievement in that area, the documentation must address the relevance and effectiveness of projects undertaken, especially their cost effectiveness and the relevance and effectiveness of any services and the permanent benefits provided to the targeted population. Applicants with a history of less than two years of prior achievement in the program area should so identify themselves. They must also indicate those activities that they have carried out in the area in question and the reasons why they feel that they can successfully implement the project for which they are requesting funding. Organizations which propose providing training and technical assistance must document competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, documentation provided by these applicants must also address related achievements and competence of each cooperating or sponsoring organization. The commitment of these organizations to the applicant organization and the project and the relevant experiences and achievements of key personnel including board members, executive staff and project management staff must also be included.

(2) *Management history (sub-rating: 5 points).* Applicants must fully detail a history of sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also detail that they have consistently complied with financial and program progress reporting and audit requirements. Applicants with less than 2 years of such corporate management history should so identify themselves. These applicants should submit any available documentation on their management practices and progress reporting procedures along with a certification by a Certified or License Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

(3) *Staffing and resources (sub-rating: 5 points).* The application must fully describe (e.g. resumes) the experience and skills of key staff showing that they are not only well qualified but that their professional capabilities are relevant to the successful implementation of the project. It must also show that the applicant has adequate facilities and physical resources to carry out successfully the work plan specified.

(4) *Staff responsibilities (sub-rating: 5 points).* The application must describe how the assigned responsibilities of the staff are appropriate to the tasks identified for the project. It must show clearly that sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

b. Criterion II: Significant and beneficial impact (Maximum: 30 points).

Projects funded under this announcement must produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted. Results should be quantifiable in terms of program area expectations, e.g., business or physical development accomplished, number of jobs saved/created, number of units of housing rehabilitated, etc. The OCS grant funds, in combination with private and/or other public resources, must be targeted into low-income communities, distressed communities, and/or designated enterprise zones, with the goal of increasing the economic conditions and social self-sufficiency of residents. Projects must be designed to achieve the specific program priority area objectives defined in this program announcement.

The following are examples of specific impact measures for the various program priority areas:

(1) *Area 1.1: Urban and rural community economic development (Operational grants).* The number of new permanent direct jobs to be created for low-income residents of the area that the project is intended to serve, the number of such jobs maintained; increase in taxes paid; new technical skills development and associated career opportunities for low-income community residents; development of the community's economic and physical assets; the amount of non-Discretionary Program dollars to be mobilized and the degree of involvement by private sector individuals, corporations, and foundations in the implementation of the project.

(2) *Area 2.1: Assistance in rural housing repairs and rehabilitation.* The types of training and technical assistance proposed including specific outcomes of such assistance, e.g. number of organizations and individuals trained, the proposed number of on-site days or training days provided, sample curricula; the number of sub-standard housing units to be repaired and/or rehabilitated, noting by number those which will be occupied by a low-income owner and/or those which will be rental units; the number of low-income residents who will be helped to purchase or acquire adequate housing; the number of low-income people to be employed in such projects; the number of units to be converted or newly constructed; total non-Discretionary Program dollars mobilized; and justifications for selecting target communities that are based on the housing needs of low-income local residents and which show the types and amounts of assistance that have been provided in the communities in previous years. (In cases where new construction is proposed, it will only be approved if the applicant clearly documents that there is insufficient existing housing stock that can be economically rehabilitated.)

(3) *Area 2.2: Rural community facilities development.* The number of rural communities to be provided with technical and advisory services; the number of rural poor individuals who are expected to be directly served by applicant supported improved water and waste water systems; the decrease in the number of inadequate water systems related to applicant activity; the number of newly-established and applicant supported treatment systems (all of the above may be expressed in terms of equivalent connections); the increase in local capacity in engineering and other areas of expertise; and the amount of non-Discretionary Program dollars expected to be mobilized.

(4) *Area 3.0: Assistance to migrants and seasonal farmworkers.* The number of farmworkers who are expected to improve their agricultural skills and thus improve their agricultural employment situation; the number of farmworkers/families who will receive crisis nutritional relief, emergency health and social services referrals and assistance, and assistance in development of self-help systems of food production; the number of farmworkers who are expected to gain longer term or permanent private sector employment in areas outside agriculture; the number of farmworkers who will receive help in the areas of housing; the number of housing units to be repaired or rehabilitated; the degree and kind of such help; the amount of non-Discretionary Program dollars expected to be mobilized; and the degree of private sector involvement that will be utilized in developing and carrying out projects funded under this announcement.

c. Criterion III: Project Implementation and Evaluation (Maximum: 30 points)—(1) *Project Implementation Component (sub-rating: 25 points).* The application must contain a detailed and specific work plan that is both sound and feasible. It must set forth realistic quarterly time targets by which the various work tasks will be completed. Because quarterly time schedules are used by OCS as a key instrument to monitor progress, failure to include these time targets may seriously reduce an applicant's point score in this criterion. It must define critical issues or potential problems that might impact negatively on the project and it must indicate how the project objectives will be attained notwithstanding any such potential problems.

(2) *Evaluation component (sub-rating: 5 points).* All proposals should include a self-evaluation component. The evaluation data collection and analysis procedures should be specifically oriented to assess the degree to which the stated goals and objectives are achieved. Qualitative and quantitative measures reflective of the scheduling and task delineation in (1) above should be used to the maximum extent possible. This component should indicate the ways in which the potential grantee would integrate qualitative and quantitative measures of accomplishment and specific data into its program progress reports that are required by OCS from all grantees.

d. Criterion IV: Public—Private Partnerships (Maximum: 5 points). All applications must document that the private and/or public matching funds requirement will be met as part of the grant. This commitment of non-Discretionary Grant funds is necessary for an application to be considered.

An application may be eligible for points under this criterion only if, in addition to the required matching funds, it documents that it will mobilize from public or private sources additional project support and assistance which will directly benefit the project and poverty level target area residents.

e. Criterion V: Budget appropriateness and reasonableness (Maximum: 15 points). Each applicant should carefully review the requirements of the specific program priority area and the budget submitted must coincide with these requirements.

The proposed request for funds must be commensurate with the level of effort necessary to accomplish the goals and objectives of the project. It must include a detailed budget breakout for each of the budget categories in Part III, Section B of the SF 424. (Please identify any positions for which less than full-time funding is requested.) The estimated cost to the government of the project must also be reasonable in relation to the value of the anticipated results.

The contribution of any other private and/or public sector agencies or organizations must be assured in writing in the application when it is submitted.

3. Criteria for Review and Evaluation of Applications Submitted Under Priority Area 1.2

a. Criterion I: Organizational capability and capacity (Maximum: 20 points)—(1) *Organizational experience in program area (sub-rating: 5 points).*

Where the applicant has a history of prior activity or achievement in economic development, the documentation must address the relevance and effectiveness of projects undertaken, especially their cost effectiveness and the relevance and effectiveness of any services and the permanent benefits provided to the targeted population. Applicants must also indicate why they feel that they can successfully implement the project for which they are requesting funding.

(2) *Management capacity (sub-rating: 5 points).* Applicants must fully detail their ability to implement sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also detail that they have consistently complied with financial and program progress reporting and audit requirements. Applicants should submit any available documentation on their management practices and progress reporting procedures along with a certification by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

(3) *Staffing (sub-rating: 5 points).* The application must fully describe (e.g. resumes) the experience and skills of key staff showing that they are not only well qualified but that their professional capabilities are relevant to the successful implementation of the project.

(4) *Staff responsibilities (sub-rating: 5 points).* The application must describe how the assigned responsibilities of the staff are appropriate to the tasks identified for the project.

b. Criterion II: Significant and beneficial impact (Maximum: 35 points). A work plan funded under this announcement must show that there is a clearly identified need in a low-income area which is not being effectively addressed currently.

Project funds under this announcement must be used to develop a Business Plan for a project which would produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted and mobilize non-Discretionary Program dollars from private sector individuals, corporations, and foundations if the project is implemented. The project around which the Business Plan is developed with the use of OCS grant funds, must be targeted into low-income communities, distressed communities, and/or designated enterprise zones, with the goal of increasing the economic conditions and social self-sufficiency of residents. Activities must be designed to achieve the specific Program Priority Area 1.2 objectives as defined in this program announcement.

c. Criterion III: Project implementation and evaluation (Maximum: 30 points).—(1) *Project Implementation Component (sub-rating: 25 points).* The application must contain a detailed and specific work plan that is both sound and feasible. It must set forth realistic quarterly time targets by which the various work tasks will be completed. Because quarterly time schedules are used by OCS as a key instrument to monitor progress, failure to include these time targets may seriously reduce an applicant's point score in this criterion. It must define critical issues or potential problems that might impact negatively on the project and it must indicate how the project objectives will be attained notwithstanding any such potential problems.

(2) *Evaluation Component (sub-rating: 5 points).* All proposals should include a self-evaluation component. The evaluation data collection and analysis procedures should be specifically oriented to assess the degree to which the stated goals and objectives are achieved. Qualitative and quantitative measures reflective of the scheduling and task delineation in (1) above should be used to the maximum extent possible. This component should indicate the ways in which the potential grantee would integrate qualitative and quantitative measures of accomplishment and specific data into its program progress reports that are required by OCS from all grantees.

d. Criterion IV: Budget appropriateness and reasonableness (Maximum: 15 points). Each applicant should carefully review the requirements of Program Priority Area 1.2 and the budget submitted must coincide with those requirements.

The proposed request for funds must include a detailed budget breakout for each of the pertinent budget categories in Part III, section B of the SF–424. (Please identify any positions for which less than full-time funding is requested.)

Part VI: Instructions for Completing Applications, Closing Date and Delivery of Applications

A. Submission Date

The closing date for applications submitted under this program announcement is April 10, 1987. Applications may be mailed or hand delivered to: Family Support Administration/DHHS, Office of Grants Management, Room 2222—Switzer Building, 330 C Street, SW., Washington, DC 20201.

Hand delivered applications will be accepted during the normal working hours of 8:45 a.m. to 5:30 p.m., Monday through Friday (excluding Federal legal holidays), up through the closing date of April 10, 1987. All other applications must be postmarked or dated by a commercial carrier not later than midnight, April 10, 1987.

An application will be considered to be received on time under either one of the following two circumstances:

1. The application was sent by registered or certified mail or by private commercial carrier no later than the closing date, as evidenced by a U.S. Postal Service date postmark or by commercial carrier dating, unless it arrives too late to be considered by the independent readers.

Applicants are responsible for assuring that the U.S. Post Office or private commercial carrier dates the application package. Applicants should be aware that not all post offices or private commercial carriers provide a dated postmark unless specifically instructed to do so.

2. The application is hand delivered on or before the closing date to the Office of Grants Management, FSA, at the address indicated above. In establishing the date of receipt of hand delivered applications, reliance will be placed on documentary evidence of receipt maintained by FSA. Any application not meeting the above closing date for submission will be disqualified and returned to the applicant organization.

B. Application Package

Each application must include:

1. A signed original and six additional copies of the application.

The original must bear original signatures of the certifying representative of the applicant organization. Do not include extraneous materials such as agency promotional brochures, slides, tapes, film clips, etc. It is not feasible to use such items in the review process, and they will be discarded if included.

2. A self-addressed, franked postcard so that acknowledgment of recipt can be returned. (This requirement applies even if the application is accompanied by a "return recepit requested card".) All applications will be assigned an identification number which will be noted on the acknowledgment. This number and the program priority area must be referred to in all subsequent communication with OCS concerning the application. If you do not receive the

acknowledgment within three weeks after the deadline date, please notify OCS by telephone (202) 475–0396.

Special note.—After an identification number is assigned and the applicant has been notified of the number, applications will be filed serially by the number to aid in quick retrieval. It is not possible for FSA staff to provide a timely response to inquiries about a specific application unless this number and program priority area are given along with the applicant's name.

C. Contents of Applications

Each copy of the application must contain in the order listed, each of the following (more detailed instructions are noted in Part III.D.3., above, and in Part V.)

1. A Table of Contents as noted in Part III, above;

2. Executive Summary no more than the equivalent of 5 single spaced typed pages;

3. Standard Form 424, Part I, Federal Assistance—to be completed according to instructions contained on that form and in Part V of this Announcement.

4. Standard Form 424, Part II, Project Approval Information items 1 through 10, with attachments;

5. Standard Form 424, Part III, Budget Information—Sections A through F with attachments; and

6. Standard Form 424, Part IV, Project Narrative, fully describing the project being proposed in response to this announcement. The narrative should be fully responsive to the specific requirements contained under each program priority area and address the review criteria.

Applications once submitted are considered final and no additions will be accepted by OCS.

Again, applicants are reminded that failure to meet the specific programmatic format and the submission requirements stated herein may result in the disqualification and return of an application.

Part V. Instructions For Completing Applications (OMB Approval Number 0990–0147, Expiration date 9–30–87)

A. Introduction

Use of Forms

The forms included in this Announcement shall be used to apply for all new discretionary grants awarded by the Office of Community Services (OCS) under the Community Services Block Grant (CSBG) Discretionary Program. They shall also be used to request post award supplemental assistance, or proposed changes or amendments, from the OCS. For an original application for a grant, an original and six copies of the forms should be submitted to the Office of Community Services. For subsequent requests for post award assistance, proposed changes or amendments, only three copies of material are required. If an item cannot be answered or does not appear to be related or relevant to the assistance required, write "NA" for not applicable.

B. Applications

Applicants for new awards are required to submit a complete application which consists of Standard Form 424 Part I through Part V. Applicants for new projects must also include completed Forms HHS–441, Civil Rights Assurance and HHS-641 Rehabilitation Act Assurance and Certification on Small, Minority, and Woman-Owned Business. All applications must be complete and comprehensive documents and may not require reference to documents which may have been submitted as part of earlier applications to OCS.

C. Submission of Applications

In applications for assistance under the OCS Discretionary Program, SF–424, Part IV, the Program Narrative, must be limited to no more than 60 pages.

This limitation includes any appendices that serve to further explain the content of Part IV. However, the following documents and materials may be submitted as appendices in addition to the 60 page limitation on the Program Narrative: Articles of Incorporation, By-laws, and Resumes.

The 60 page limitation does not apply to Parts I, II, III and V of the Standard Form 424 or any documentation or explanatory materials relating to these Parts.

1. Instructions For Completion of Part I, SF–424

Section I of Part I, SF–424

Applicants shall complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk (*) and use the remarks section (Part I, section IV).

Item. 1. Mark "Application" when used as a grant application. (The applicant, unless otherwise advised by the State or area-wide clearinghouse shall use a copy of the SF–424 Part I as a notification of intent to apply for Federal Assistance in accordance with procedures established by these clearinghouses and Executive Order 12372. When used for this purpose, mark "Notice of Intent".)

2a. Applicant's own control number, if desired.

2b. Date section I is prepared.

3a. All applicants shall enter the number assigned by State clearinghouses or, if delegated by State, by area-wide clearinghouse(s). Applications submitted to OCS must contain this identifier if provided by the applicable State/area-wide clearinghouse(s). If in doubt, consult your clearinghouse(s).

3b. Date applicant notified of clearinghouse(s) identifier code(s).

4a/4h. Enter legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, name and telephone number of person who can provide further information about this request. IF THE PAYEE WILL BE OTHER THAN THE APPLICANT, ENTER IN THE REMARKS SECTION (SECTION IV OF PART I), UNDER THE HEADING "PAYEE", THE PAYEE'S NAME, DEPARTMENT OR DIVISION, COMPLETE ADDRESS AND EMPLOYER IDENTIFICATION NUMBER, AS ASSIGNED BY THE INTERNAL REVENUE SERVICE, OR THE DHHS ENTITY NUMBER, IF KNOWN. If an individual's name and/or title is desired on the payment instrument, the name and/or title of the designated individual must be specified.

5. Enter Employer Identification Number of applicant as assigned by Internal Revenue Service. If the applicant organization has been assigned a DHHS entity number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full entity number. If applicant has other grants with DHHS and has been assigned a Pay Identification Number (PIN), enter this PIN in parenthesis ( ) beside employer identification number.

6a. Enter the Catalog of Federal Domestic Assistance number assigned to program under which assistance is requested. If more than one program (e.g., joint funding) enter "multiple" and explain in remarks. If unknown, cite applicable Pub. L. or U.S. Code.

6b. Enter the program title from Catalog of Federal Domestic Assistance. Abbreviate, if necessary.

7. Enter a title and appropriate description of project.

8. Enter appropriate letter to designate grantee type—"City" includes town, township or other municipality. If the grantee is other than that listed, specify type on "Other" line e.g., Council of Governments.

Note.—Non-profit organizations which have not previously received OCS program

support must submit proof of non-profit status.

9. Enter Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as state, county, or city. If entire unit is affected, list it rather than sub-units.

10. Identify estimated number of persons directly benefiting from project, as described in the program narrative (SF–424, Part IV).

11. All applicants for OCS discretionary grant funds should enter the letter "A".

12. Enter amount requested or to be contributed during the funding/budget period by each contributor. Item 12 must include all funding for the proposed project including all non-OCS funds which the applicant plans to mobilize. (See Part III, D of the FY–87 Program Announcement).

Note.—When completing item 12a, "Federal" funding is to be taken to refer to the requested OCS discretionary funding only. All other Federal funds are to be included in item 12e "OTHER".

Section IV of Part I (reverse side of page 1) must include a further two columns detailing item 12 (b through e) in which public funds are distinguished from private funds, and in which total mobilized funds (including 12b, 12c, 12d and 12e) are divided into separate public and private funds components by source. This information will be used in both the initial screening and outside review of applications. Where allowable the value of in-kind contributions will be included. If the action is a change in the dollar amount of an existing grant (a revision or augmentation), indicate only the amount of change. For decreases, enclose the amount in parentheses. For multiple program funding, use totals and show program breakdowns in remarks. Item definitions: 12a, amount requested from OCS; 12b, amount applicant will contribute; 12c, amount from State, if applicant is not a State; 12d, amount from local government, if applicant is not a local government; 12e, amount from any other sources INCLUDING NON-OCS FEDERAL FUNDS.

13a. The Congressional District identified by its State and number should correspond with the applicant's address under item 4 above.

13b. Enter the number of the Congressional District(s) and State(s) where most of actual work of the project will be accomplished. If city-wide or State-wide covering several Districts, write "City-wide" or "State-wide".

14. Enter appropriate letter. Definitions are:

a. *New.* A submittal for the first time for a new project or project period.

b. *Renewal.* Not applicable to the OCS CSBG Discretionary Grant Program.

c. *Revision.* A modification to project after the initial funding/budget period and within the approved project period.

d. *Continuation.* Not applicable to the OCS CSBG Discretionary Grant Program.

e. *Augmentation.* Not applicable to the OCS CSBG Discretionary Grant Program.

15. Enter approximate date project is expected to begin. If initial budget period is other than 12 months, check item 21 and explain in both section IV of Part I and in Part IV of the SF–424.

16. Enter estimated number of months to complete project after Federal funds are available.

17. Complete only for revisions (item 14c).

18. Estimated date application will be submitted to Federal agency.

19. Indicate Federal agency to which this request is addressed—HHS/FSA, Washington, DC, 20201

20. Write "NA".

21. Check appropriate box as to whether Part I, section IV of SF 424 contains remarks and/or additional "remarks" sheets are attached.

Section II of Part I SF–424

Applicants shall always complete items 22a or 22b as well as 23a and 23b. An explanation follows for each item.

22a and b. Self explanatory.

23a. Enter name and title of authorized representative of legal applicant.

23b. Self explanatory.

Note.—Authorized representative must personnally execute this document.

Note.—Applicant completes only sections I and II of Part I. Section III is completed by the Federal agency to whom application is being made.

2. Instructions for Completion of Part II SF–424

Negative answers will not require an explanation unless the responsible program office requests more information at a later date. All "Yes" answers must be explained on a separate page in accordance with these instructions.

Item 1.—Provide the name of the governing body establishing the priority system and the priority rating assigned to this project. If the priority rating is not available, give the approximate date that it will be obtained.

Item 2.—Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval. If the clearance is not available, give the approximate date that it will be obtained.

Item 3.—Attach the clearinghouse comments for the application in accordance wit the instructions contained in regulations or procedures established under Executive Order 12372.

Item 4.—Furnish the name of the approving agency and the approval date. If the approval has not been received, state approximately when it will be obtained.

Item 5.—Show whether the approved comprehensive plan is State, local or regional; or, if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination, and state whether this project is in conformance with the plan. If the plan is not available, explain why.

Item 6.—Show the population residing or working on the Federal installation who will benefit from this project. (Federally recognized Indian reservations are not "Federal Installations".)

Item 7.—Show the percentage of the project work that will be conducted on Federally-owned land or leased land. Give the name of the Federal installation and its location.

Item 8.—Briefly describe the possible beneficial and/or harmful effect on the environment because of the proposed project. If an adverse environmental effect is anticipated, explain what action will be taken to minimize it.

Item 9.—State the number of individuals, families, businesess, or farm this project will displace, if any.

Item 10.—Show the Catalog of Federal Domestic Assistance number, the program number, the type of assistance, the status, the amount of each project where there is related previous, pending or anticipated assistance from another funding source.

Item 10 will generally be answered in the affirmative, particularly for community economic development applications. Whenever it is answered in the affirmative (i.e. whenever items 12c, 12d, or 12e of Part I have non-zero entries), Part II must be accompanied by additional documentation which identifies the source of all of the State, local and other funds listed in item 12 of Part I of the SF 424. This documentation must include assurances of the availability of these funds. Funds previously awarded for this project but yet to be expended must be evidenced by copies of applicants to, and award documents or letters of commitment from, the expected source of these funds. OCS reserves the right to contact

these sources regarding anticipated funding or previous assistance.

3. Instructions for completion of Part III of SF–424

This form is designed so that application can be made for funds to support one or more functions or activities.

OCS requires that activities commonly identified by program accounts be displayed separately on individual lines (Lines 1–4 under Section A and Columns 1–4 under Section B).

Note.—In completing these sections the "Federal" fund budget entries will relate to the requested OCS discretionary funds only, and "Non-Federal" will include mobilized funds from all other sources—applicant, State, local and other. Federal funds other than requested OCS discretionary funding should be included in "Non-Federal" Entries.

Whenever budget data—divided by Grant Program, Function or Activity — are called for, as in Sections A, B, and C, the following four elements are to be used:

Element	Use in: Section and Item
Administrative Costs of the Applicant Organziation (See Program Announcement, Part III. B.).	A(1), B(1), C(8).
Administrative Costs of specific project or business to be financed by the applicant.	A(2), B(2), C(9).
*Working Capital for the specific project to be financed by the applicant.	A(3), B(3), C(10).
*Cost of Fixed Assets of the specific project to be financed by the applicant.	A(4), B(4), C(11).

* Use these categories only where applicable—e.g. in some economic development applications. For other applicants, enter all other non-administrative costs in Section B Column 2.

Note.—The budget forms in Part III of SF 424 are only to be used to present grant administrative costs and major budget categories. Financial data that is generated as part of a project Business Plan or other internal project cost data must be separate and should appear as part of the project Business Plan or other project implementation data.

Sections A and D of Part III must contain entries for both Federal (OCS) and non-Federal (mobilized) funds. Section B contains entries for Federal (OCS) funds only. Section C contains entries for non-Federal (mobilized) funds only. Clearly identified continuation sheets in SF–424, Part III format should be used as necessary.

Section A—Budget Summary—Lines 1–4

Col. (a): Enter on Line 1 under Column (a) "Administrative, applicant"; enter on Line 2 under Column (a) "Administrative, project:" enter on Line 3 under Column (3) "Working Capital"; enter on Line 4 under Column (a) "Fixed Assets".

Col. (b): Enter on Line 1 under Column (b) the Program Announcement Number OCS–87–1–DP. Enter on Line 2 under Column (b) the appropriate Catalog of Federal Domestic Assistance Number (13.665) for all applications under Announcement No. OCS–87–1–DP.

Col. (c)–(g): For new applications, leave Columns (c) and (d) blank. For each line entry, enter in Columns (e), (f), and (g) the appropriate amounts needed to support the project for the budget period.

Line 5—Enter the totals for all columns completed, (c) through (g).

Section B—Budget Categories—

Columns 1–5. In OCS applications, it is only necessary to complete Columns 1 and 5.

In the Column headings (1) through (4) enter the same title of the application programs and/or program accounts shown on Line 1, Column (a), Section A. above. For the grant program or activity (program account) entered in Columns 1, enter the total requirements for OCS Federal funds by the Object Class Categories of this section.

Allowability of costs are governed by applicable cost principles set forth in Sub-part Q of 45 CFR Part 74.

Personnel-line 6a. Enter the total costs of salaries and wages of applicant/grantee staff only. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant. (See Section F. for additional requirements).

Fringe benefits-line 6b. Enter the total costs of fringe benefits unless treated as part of an approved indirect costs rate which is entered on Line 6.j. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Travel-line 6c. Enter total costs of out-of-town travel by employees of the project. Do not enter costs for consultant's travel or local transportation. Provide justification for requested travel costs. (See Line 6h and section F, Line 21, for additional instructions).

Equipment-line 6d. Enter the total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property" means tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. An applicant may use its own definition of non-expendable personal property, provided that such a definition would at least include all tangible personal property as defined in the preceding sentence. (See section F, Line 21 for additional requirements).

Supplies-line 6e. Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Contractual-line 6f. Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and, (2) contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individual service contractors on this line. If available at the time of application, attach a list of contractors indicating the name of the organization, the purpose of the contract and the estimated dollar amount of the award. If the Name of Contractor, Scope of Work, Estimated Total are not available or have not been negotiated, include in Line h, "Other".

Note.—Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must submit sections A and B of Part III, Budget Section, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6(f). Provide back-up documentation identifying name of contractor, purpose of contract and major cost elements.

Construction-line 6g. Enter the costs of renovation or repair. Provide narrative justification and break-down of costs.

Other-line 6h. Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which dos not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total direct changes-line 6i. Show the total of Lines 6(a) through 6(h).

Indirect charges-line 6j. Enter the total amount of indirect costs. If no indirect costs, under a currently approved agreement, are requested enter "none". This line should be used only when the applicant (except local governments)

currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies. Please enclose a copy of current rate. Local governments shall enter the amount of the indirect costs determined in accordance with the Federal agency's requirements. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Total-line 6k. Enter the total amounts of Lines 6(i) and 6(j). For all new applications the total amount shown in Column (5), Line 6(k), should be the same as the amount shown in section A, Column (e), Line 5.

Program income-line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and that generated from matching funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement in Part IV of the SF–424.

Section C—Non-Federal Resources—Line 8–11

Enter amounts of "non-Federal" resources that will be used to support the project if required by the Priority Area. Provide a brief explanation, on a separate sheet, showing the type of contribution, and whether it is in cash or in-kind. If inkind is allowable and included, show the basis for computation including:

(1) Numbers and types of volunteers and rates at which their services are valued;

(2) Valuation of donated space to be used in the project, including the number of square feet and the annual rental value assigned per square foot.

(3) Determination of use allowance for grantee-owned space; (Include statement whether space was purchased or constructed, totally or in part, with Federal funds for items (2) and (3));

(4) Type and value of other in-kind contributions expected.

Note. Speculative match, or match based on independent contingencies (such as receipt of another grant) will not be counted toward the matching requirement.

Column (a). Enter the program title or activities (program accounts).

Column (b). Enter the amount of cash and in-kind contributions to be made by the applicant.

Column (c). Enter the State contribution. If the applicant is a State agency, enter the non-Federal funds to be contributed by the State other than the applicant State agency.

Column (d). Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e). Enter the total of Columns (b), (c), and (d).

Line 12—Enter toal of each Columns (b) through (e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D—Forcasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the budget period.

Line 15.—Enter the totals of amounts on Line 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project(s)—

No entries are required for OCS grants.

Section F—Other Budget Information

Line 21—Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

A. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;

B. Any foreign travel;

C. A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on Line 6d, Section B. Need for equipment must be supported in program narrative;

D. *Contractual:* Major items or groups of smaller items; and

E. *Other:* group into major categories, all costs for consultants, local transportation, space, rental, training allowances, staff training, computer equipment, etc. Provide a complete breakdown of all costs that make up this category.

Line 22—Enter the type of HHS or other Federal agency approved indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of rate agreement.

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain any SF–424, Part III entries.

4. Instructions for Completion of Part IV of SF–424

The program narrative (Part IV) for all applications must follow a prescribed outline reflective of the Program Announcement Table of Contents.

Specific Program Guidance found in the **Federal Register** Program Announcement No. OCS–87–1–DP for each priority area provides more detailed instructions for Part IV. This announcement also includes requirements regarding format and content to be included in preparation of applications and criteria to be used for screening and evaluation in all priority areas.

Applications under Priority Area 1.1, Urban and Rural Community Economic Development (Operational Grants), must also follow the special instructions below:

Each application submitted under this program priority area must include a valid and complete business plan as part of its project work plan as required in Part IV of the SF–424.

The Business Plan is one of the major components that will be evaluated by OCS to determine the feasibility of an economic development project. Therefore, the Business Plan must be well prepared and address all the major issues noted herein.

It should contain a full and accurate description of the proposed use of the requested financial assistance, whether it is for a business investment or a physical or commercial development project. The program narrative must show how increased employment, income and ownership opportunities will be provided for target area low-income residents by the proposed project. The applicant must also clearly document an ability to strengthen linkages with and mobilization of other private and public resources. Wherever applicable, assurances of participation of the private and/or public sector in the proposed project must be fully documented.

It must demonstrate to OCS that there is a reasonable assurance that the amount of the requested OCS funds, together with other funds available, is

adequate for the completion of the project or achievement of the purposes for which an allocation of OCS funds is requested.

The following guidelines show the necessary sections of a Business Plan, and what should be included in each section.

Use of these guidelines should result in a complete and professional Business Plan which makes an orderly presentation of the facts necessary to be judged responsive to the program announcement.

Because the guidelines were written to cover a variety of possibilities, rigid adherence to them is not possible nor even desirable for all projects. For example, a plan for a service business would not require a discussion of manufacturing nor product design.

Summary Business Plan: A 1–2 page summary of the Business Plan should be a brief and accurate presentation of the highlights of the project and its opportunities and should include the following:

The Project: Indicate when the company was founded, what is special or unique about it and what it intends to accomplish in this project for which funds are being requested. Also indicate what in the background of the management team makes its members particularly qualified (e.g. unique know-how) to pursue the business opportunity.

Market Opportunity: Identify and briefly explain the market opportunity. This explanation should include information on the size and growth rate of the market for the business' product or service, and a statement indicating the percentage of that market that will be captured. A brief statement about industrywide trends is also useful and any indication of plans for the expansion of the initial product line should be included.

Financial Data: State sales and profit goals for the three years following an OCS award. State clearly the size of the OCS grant request for investment purposes and all other funds already obtained or committed.

The format for the complete Business Plan is as follows:

1. *The Business and its industry:* This section should describe the nature and history of the business and provide some background on its industry.

A. *The Business:* (legal entity, general business category);

B. *Description and Discussion of Industry:* (Current status and prospects for the industry);

2. *Products and Services:* This section deals with the following:

A. *Description:* Describe in detail the products or services to be sold.

B. *Proprietary Position:* Describe proprietary features if any of product (patents, trade secrets).

C. *Potential:* Features of the product or service that may give it an advantage over the competition.

3. *Market Research and Evaluation:* (The purpose of this section is to present sufficient information to show that the product or service has a substantial market and can achieve sales in the face of competition.)

A. *Customers:* Who are the actual and potential purchasers for the product or service by market segment?

B. *Market Size and Trends:* What is the size of the current total market for the product or service offered?

C. *Competition:* An assessment of the strengths and weaknesses of competitive products and services.

D. *Estimated Market Share and Sales:* What it is about your product or services that will make it saleable in the face of current and potential competition.

4. *Marketing Plan:* The marketing plan should detail the product, pricing, distribution, and promotion strategies that will be used to achieve the estimated market share and sales projections. The marketing plan must describe what is to be done, how it will be done and who will do it. The plan should address the following topics—Overall Marketing Strategy, Packaging, Service and Warranty, Pricing, Distribution and Promotion.

5. *Design and Development Plans:* If the product, process or service of the proposed venture requires any design and development before it is ready to be placed on the market, the nature and extent and cost of this work should be fully discussed. The section should cover items such as Development Status and Tasks, Difficulties and Risks, Product Improvement and New Products, and Costs.

6. *Manufacturing and Operations Plan:* A manufacturing and operations plan should describe the kind of facilities, plant location, space, capital equipment and labor force (part and/or full time and wage structure) that are required to provide the company's product or service.

7. *Management Team:* (The management team is the key in starting and operating a successful business. The management team should be committed with a proper balance of technical, managerial and business skills and experience in doing what is proposed.) This section must include a description of: The key management personnel and their primary duties; compensation and/or ownership; the organizational structure, Board of Directors; management assistance and training needs; and supporting professional services.

8. *Overall Schedule:* A schedule that shows the timing and interrelationships of the major events necessary to launch the venture and realize its objectives. Prepare, as part of this section, a month-by-month schedule that shows the timing of such activities as product development, market planning, sales programs, production and operations. Sufficient detail should be included to show the timing of the primary tasks required to accomplish an activity.

9. *Critical Risks and Assumptions:* The development of a business has risks and problems and the Business Plan should contain some explicit assumptions about them. Accordingly, identify and discuss the critical assumptions in the Business Plan and the major problems that will have to be solved to develop the venture. This should include a description of the risks and critical assumptions relating to the industry, the venture, its personnel, the product's market appeal, and the timing and financing of the venture.

10. *Community Benefits:* The proposed project must contribute to economic, community and human development within the project's target area. A section that describes and discusses the potential economic and non-economic benefits to low-income members of the community must be included.

Among the benefits that merit discussion are:

Economic

—Number of permanent jobs generated or maintained in each of the first three years of the project;
—Number and type of new permanent employment opportunities for previously unemployed or under-employed individuals;
—Number of skilled jobs and the number of other higher paying permanent jobs;
—Number of these jobs that are filled by poverty level project area residents;
—Ownership opportunities created for poverty level project area residents;
—Purchase of goods and services from local suppliers;
—Increases in personal, property and/or business taxes paid

Human Development

—New technical skills development and associated career opportunities for community residents;
—Management development and training.

Community Development

—Development of community's physical assets;
—Provision of needed, but currently unsupplied, services or products to community;
—Improvement in the living environment

11. *The Financial Plan:* The Financial Plan is basic to the development of a Business Plan. Its purpose is to indicate the project's potential and the timetable for financial self-sufficiency. In developing the Financial Plan, the following exhibits must be prepared for the grant year and for each of the next two years following an OCS grant period:

a. Profit and Loss Forecasts—Quarterly for each year;
b. Cash Flow Projections—Quarterly for each year;
c. Pro Forma Balance Sheets—Quarterly for each year;
d. Initial Sources of Capital Funds; and
e. Any Future Capital Requirements and Sources.

(The Catalog of Federal Domestic Assistance Number for this Office of Community Services Block Grant Discretionary Program is 13.665.)

Dated: February 4, 1987.

David J. Kirker,

Director, Office of Community Services.

Appendices

A—Annual Revision of Poverty Income Guidelines (February 11, 1986)
B—SF–424, Federal Assistance
C—Assurances

Poverty Income Guidelines; Annual Revision

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides a revision of the poverty income guidelines to account for increases in the Consumer Price Index.

DATE: Effective upon publication.

ADDRESS: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: For information about the poverty guidelines in general, contact Joan Turek-Brezina (telephone: (202) 245–6141).

Questions about applying these guidelines to a particular program should be referred to the Federal office which is responsible for the program.

For information about the Hill-Burton Uncompensated Services Program, contact the Office of the Director, Division of Facilities Compliance (telephone: (301) 443–6512).

This notice provides the 1986 revision of the poverty income guidelines required by sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). As required by the statute, this revision reflects changes in the Consumer Price Index; it was accomplished using the same methodology used in previous years.

These poverty income guidelines are used as an eligibility criterion by a number of Federal programs. The guidelines are a simplified version of the poverty thresholds used by the Bureau of the Census to prepare its statistical estimates of the number of persons and families in poverty. The *poverty income guidelines* issued by the Department of Health and Human Services (formerly by the Community Services Administration) are used for administrative purposes—for instance, for determining whether a person or family is financially eligible for assistance or services under a particular Federal program. The *poverty thresholds* are used primarily for statistical purposes.

In certain cases, as noted in the relevant authorizing legislation or program regulations, a program uses the poverty guidelines as only one of several eligibility criteria, or uses a modification of the guidelines (for example, 130 percent or 185 percent of the guidelines). Some other programs, while not using the guidelines as a criterion of individual eligibility, use them for the purpose of targeting assistance or services. In some cases, these poverty income guidelines may not become effective for a particular program until a regulation or notice specifically applying to the program in question has been issued.

The poverty guidelines given below are applicable to both farm and nonfarm families.

The following definitions (derived for the most part from language used in U.S. Bureau of the Census. Current Population Reports, Series P–60, No. 147 and earlier reports in the same series) are made available for use in connection with the poverty income guidelines. Programs may use somewhat different definitions.

(a) Family

A family is a group of two or more persons related by birth, marriage, or adoption who reside together, all such related persons are considered as members of one family. (If a household includes more than one family and/or more than one unrelated individual, the poverty guidelines are applied separately to each family and/or unrelated individual, and not, to the household as a whole.)

(b) Family unit of size one

In conjunction with the poverty income guidelines, a family unit of size one is an unrelated individual (as defined by the Census Bureau)—That is, a person 15 years old or over (other than an inmate of an institution) who is not living with any relatives. An unrelated individual may be the sole occupant of a housing unit, or may be residing in a housing unit (or in group quarters such as a rooming house) in which one or more persons also reside who are not related to the individual in question by birth, marriage, or adoption. (Examples of unrelated individuals residing with others include a lodger, a foster child, a ward, or an employee.)

(c) Income

Refers to total annual cash receipts before taxes from all sources. (Income data for a part of a year may be annualized in order to determine eligibility—for instance, by multiplying by four the amount of income received during the most recent three months.) Income includes money wages and salaries before any deductions, but does not include food or rent received in lieu of wages. Income also includes net receipts from nonfarm or farm self-employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses). Income includes regular payments from social security, railroad retirement, unemployment compensation, workers' compensation, strike benefits from union funds, veterans' benefits, public assistance (including Aid to Families with Dependent Children, Supplemental Security Income, and General Assistance money payments), training stipends, alimony, child support, and military family allotments or other regular support, from an absent family member or someone not living in the household; private pensions, government employee pensions, and regular insurance or annuity payments; and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts. For eligibility purposes, income does not include the following money receipts: capital gains; any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car, tax refunds, gifts, lump-sum inheritances, one-time insurance payments, or compensation for injury. Also excluded are noncash benefits,

such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or rent received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such Federal noncash benefit programs as Medicare, Medicaid, Food Stamps, school lunches, and housing assistance.

1986 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$5,360
2	7,240
3	9,120
4	11,000
5	12,880
6	14,760
7	16,640
8	18,520

For family units with more than 8 members, add $1,880 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$6,700
2	9,050
3	11,400
4	13,750
5	16,100
6	18,450
7	20,800
8	23,150

For family units with more than 8 members, add $2,350 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$6,170
2	8,330
3	10,490
4	12,550
5	14,810
6	16,970
7	19,130
8	21,290

For family units with more than 8 members, add $2,160 for each additional member.

Dated: February 5, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 87-2964 Filed 2-10-86; 8:45 am]

BILLING CODE 4150-04-M

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION *(Mark appropriate box)*
- ☐ NOTICE OF INTENT (OPTIONAL)
- ☐ PREAPPLICATION
- ☐ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER
- a. NUMBER
- b. DATE *Year month day* 19

3. STATE APPLICATION IDENTIFIER *NOTE: TO BE ASSIGNED BY STATE*
- a. NUMBER
- b. DATE ASSIGNED *Year month day* 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
- a. Applicant Name
- b. Organization Unit
- c. Street/P.O. Box
- d. City
- e. County
- f. State
- g. ZIP Code
- h. Contact Person *(Name & Telephone No.)*

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM *(From CFDA)*
- a. NUMBER
- MULTIPLE ☐
- b. TITLE

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other *(Specify)*:
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT *(Names of cities, counties, states, etc.)*

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s) ☐☐

12. PROPOSED FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. Total	$ .00

13. CONGRESSIONAL DISTRICTS OF:
- a. APPLICANT
- b. PROJECT

15. PROJECT START DATE *Year month day* 19

16. PROJECT DURATION *Months*

18. DATE DUE TO FEDERAL AGENCY ► *Year month day* 19

14. TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter ☐

17. TYPE OF CHANGE *(For 14c or 14e)*
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other *(Specify)*:
Enter appropriate letter(s) ☐☐☐

19. FEDERAL AGENCY TO RECEIVE REQUEST
- a. ORGANIZATIONAL UNIT (IF APPROPRIATE)
- b. ADMINISTRATIVE CONTACT (IF KNOWN)
- c. ADDRESS

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT►

To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____

b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐
OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
- a. TYPED NAME AND TITLE
- b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED *Year month day* 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
- ☐ a. AWARDED
- ☐ b. REJECTED
- ☐ c. RETURNED FOR AMENDMENT
- ☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
- ☐ e. DEFERRED
- ☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. TOTAL	$ .00

29. ACTION DATE► *Year month day* 19

30. STARTING DATE *Year month date* 19

31. CONTACT FOR ADDITIONAL INFORMATION *(Name and telephone number)*

32. ENDING DATE *Year month date* 19

33. REMARKS ADDED ☐ Yes ☐ No

SECTION IV–REMARKS *(Please reference the proper item number from Sections I, II or III, if applicable)*

OMB NO. 0348-0006

PART II
PROJECT APPROVAL INFORMATION

Item 1.
Does this assistance request require State, local regional, or other priority rating?
_____ Yes _____ No
Name of Governing Body _____
Priority Rating _____

Item 2.
Does this assistance request require State, or local advisory, educational or health clearances?
_____ Yes _____ No
Name of Agency or Board _____
(Attach Documentation)

Item 3.
Does this assistance request require State, local, regional or other planning approval?
_____ Yes _____ No
Name of Approving Agency _____
Date _____

Item 4.
Is the proposed project covered by an approved comprehensive plan?
_____ Yes _____ No
Check one: State ☐ Local ☐ Regional ☐
Location of Plan _____

Item 5.
Will the assistance requested serve a Federal installation?
_____ Yes _____ No
Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 6.
Will the assistance requested be on Federal land or installation?
_____ Yes _____ No
Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 7.
Will the assistance requested have an impact or effect on the environment
_____ Yes _____ No
See instructions for additional information to be provided.

Item 8.
Will the assistance requested cause the displacement of individuals, families, businesses, or farms?
_____ Yes _____ No
Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 9.
Is there other related assistance on this project previous, pending, or anticipated
_____ Yes _____ No
See instructions for additional information to be provided.

PART III - BUDGET INFORMATION

SECTION A - BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. TOTALS	$	$	$	$	$
7. Program Income	$	$	$	$	$

OMB NO 0348-0006

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach Additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

PART IV PROGRAM NARRATIVE (Attach per instruction)

BILLING CODE 4150-04-C

Part V—Assurances

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74 and OMB Circulars No. A–102, A–110 and applicable cost principles, (Circulars: A–21, "Educational Institutions"; A–87, "Cost Principles for State and Local Governments"; and A–122, "Nonprofit Organizations"), as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the applicant assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Pub. L. 91–646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

5. It will comply with the provisions of the Hatch Act which limit the political activity of State and local government employees.

6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201) as they apply to employees of institutions of higher education, hospitals, other nonprofit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.

Head Start, Certification of Minimum Wage: It certifies that it has reviewed the salary structures and wages for all positions and certifies that persons employed in carrying out this program shall not receive compensation at a rate which is (a) in excess of the average rate of compensation paid in the area to persons providing substantially comparable services: or (b) less than the minimum wage rate prescribed in section 6(a) of the Fair Labor Standards Act of 1938. Documentation of the methods by which it established wage scales is available in their files for review by audit and HDS personnel.

7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant, including the records of contractors and subcontractors performing under the grant.

9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. It will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93–234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

12. It will assist the Federal grantor agency in its compliance with section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historical Preservation Act of 1966 (16 U.S.C. 469a–1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR 800.8) by the grantee's activity and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

13. Applicants for the Administration for Native Americans Programs, hereby certify in accordance with 45 CFR 1336.53, that the financial assistance provided by the Office of Human Development Services for the specified activities to be performed under this program, will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

14. It will comply with the Age Discrimination Act of 1975 enacted as an amendment to the Older Americans Act (Pub. L. 94–135), which provides that: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity for which the applicant receives Federal financial assistance.

15. It will comply with section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 CFR Part 84), and all guidelines and interpretations issued pursuant thereto, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.

16. It will comply with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*) which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution).

17. It will comply with Pub. L. 93–348 as implemented by Part 46 of Title 45 (45 CFR Part 46, 42 U.S.C. 2891) regarding the protection of human subjects involved in research, development, and related activities supported by the grant.

18. It will comply with the equal opportunity clause prescribed by Executive Order 11246, as amended, and will require that its subrecipients include the clause in all construction contracts and subcontracts which have or are expected to have an aggregate value within a 12-month period exceeding $10,000, in accordance with Department of Labor regulations at 41 CFR Part 60.

19. It will include, and will require that its subrecipients include, the provision set forth in 29 CFR 5.5(c) pertaining to overtime and unpaid wages in any nonexempt nonconstruction contract which involves the employment of mechanics and laborers (including watchmen, guards, apprentices, and trainees) if the contract exceeds $2,500.

BILLING CODE 4150-04-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The undersigned (hereinafter called the "recipient") HEREBY AGREES THAT it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.

Pursuant to §84.5(a) of the regulation [45 C.F.R. 84.5(a)], the recipient gives this Assurance in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (except procurement contracts and contracts of insurance or guaranty), property, discounts, or other Federal financial assistance extended by the Department of Health and Human Services after the date of this Assurance, including payments or other assistance made after such date on applications for Federal financial assistance that were approved before such date. The recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States will have the right to enforce this Assurance through lawful means. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

This Assurance obligates the recipient for the period during which Federal financial assistance is extended to it by the Department of Health and Human Services or, where the assistance is in the form of real or personal property, for the period provided for in §84.5(b) of the regulation [45 C.F.R. 84.5(b)].

The recipient: [Check (a) or (b)]

a. ( ) employs fewer than fifteen persons;

b. ( ) employs fifteen or more persons and, pursuant to §84.7(a) of the regulation [45 C.F.R. 84.7(a)], has designated the following person(s) to coordinate its efforts to comply with the HHS regulations:

_____

Name of Designee(s) (Type or Print)

_____ _____

Name of Recipient (Type or Print) Street Address or P.O. Box

_____ _____

(IRS) Employer Identification Number City

_____

State Zip

I certify that the above information is complete and correct to the best of my knowledge.

_____ _____

Date Signature and Title of Authorized Official

If there has been a change in name or ownership within the last year, please PRINT the former name below:

NOTE: If this form is not returned with the application for financial assistance, return it to DHHS, Office for Civil Rights, 330 Independence Avenue, S.W., Washington, D.C. 20201.

HHS-641 (Rev. 12/82)

[FR Doc. 87-2648 Filed 2-6-87; 8:45 am]
BILLING CODE 4150-04-C

federal register

Monday
February 9, 1987

Part IV

Department of Transportation

Coast Guard

33 CFR Part 95

Operation of a Vessel While Intoxicated; Notice of Proposed Rulemaking; Supplemental Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION
Coast Guard

33 CFR Part 95

[CGD 84-099A; CGD 84-099]

Operation of a Vessel While Intoxicated

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing regulations designed to reduce alcohol and drug use in recreational vessel operation. The Coast Guard Authorization Act of 1984, enacted October 30, 1984, provides civil and criminal penalties for an individual who is intoxicated while operating a vessel, as determined under standards prescribed by the Secretary of the Department in which the Coast Guard operates. This Notice proposes standards for determining intoxication caused by alcohol or drugs, either based on a percentage of alcohol in the blood, resulting from blood or breath tests, or on observations of the individual's demeanor or performance. Because this Notice modifies a Notice of Proposed Rulemaking published in the **Federal Register** on May 23, 1986 (51 FR 18902) that applied primarily to commercial vessels, it is also a supplemental notice to that Notice of Proposed Rulemaking. This supplemental proposal would expand those proposed rules (51 FR 18902) to include all vessels. For vessels used for recreational purposes the Federal BAC standard would conform to State BAC standards for intoxication, where enacted. These proposals are based on indications that alcohol and/or drugs are involved in a substantial number of recreational boating casualties. The proposals are intended to reduce boating accidents caused by intoxication.

DATES: Comments must be received on or before May 11, 1987.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/21), (CGD 84-099A), U.S. Coast Guard, Washington, DC 20593. Comments will be available for examination at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, between 8 a.m. and 3 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Boating Safety Division (G-BBS/43), Office of Boating, Public, and Consumer Affairs, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593 (202) 267-0979, between 9 a.m. and 3 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: On May 23, 1986, the Coast Guard published an Advance Notice of Proposed Rulemaking in the **Federal Register** (51 FR 18900). The purpose of the Advance Notice was to solicit information and views on the problem of intoxicant use by individuals operating recreational vessels and the appropriate means of prescribing a standard for determining intoxication.

Interested persons are invited to submit written views, data or arguments on these proposed rules. Persons submitting comments should include their names and addresses, identify this Notice (CGD 84-099A) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons desiring acknowledgment that their comments have been received should include a stamped, self-addressed postcard or envelope. The proposal may be changed in light of the comments received. All comments received by the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing has been scheduled, but one may be held at a time and place to be set in a later notice in the **Federal Register**, if requested by persons raising a genuine issue and it is determined that the rulemaking will benefit from oral presentations.

Drafting Information

The principal persons involved in the drafting of this proposed rule are Mr. Carlton Perry, Project Manager, Office of Boating, Public, and Consumer Affairs and LT Sandra Sylvester, Project Attorney, Office of the Chief Counsel.

Background

The Coast Guard has dealt with the problem of alcohol and drug use on vessels through civil penalty or criminal enforcement action for negligent operation of a vessel under 46 U.S.C. 2302 and its predecessor statutes.

Data on recreational boating accidents compiled by the Coast Guard indicates that alcohol consumption is a causal or contributing factor in approximately ten percent of the more than 1100 fatalities which result from boating accidents each year. However, the accident reports submitted to the Coast Guard under the provisions of 33 CFR Parts 173 and 174 currently understate the extent of alcohol involvement. The procedures and requirements for investigations vary from State to State and locality to locality. Accident reports are submitted by individuals and by State or local authorities. Some of these reported accidents have undergone extensive investigation while others have had only cursory examination. Furthermore, individuals submitting reports may have strong reasons not to volunteer information about alcohol involvement.

Not all States require that toxicological tests be taken in accidential deaths. Based upon toxicological testing by States which have a mandatory requirement for these tests in cases of accidental deaths, and studies conducted by the Coast Guard and the National Transportation Safety Board, the Coast Guard believes that the involvement of alcohol is much greater than indicated by current reports and that some degree of impairment by alcohol may be involved in as many as fifty percent of recreational boating fatalities.

The Coast Guard has not maintained separate data on the involvement of drugs in recreational boating accidents, however, it may be assumed that the use of drugs by boaters is similar to that of persons driving automobiles. According to preliminary data on fatal motor vehicle accidents compiled by the National Highway Traffic Safety Administration, in 5% to 15% of accidents resulting in driver fatalities and approximately 10% of accidents causing driver injuries, there was evidence of drug use by the driver.

In the recreational boating area, the Coast Guard has concentrated on educational efforts to combat the problem. The Coast Guard and State enforcement officials have recognized that the consumption of alcoholic beverages among recreational boaters is widespread. Drinking is facilitated because there are no laws prohibiting the consumption of alcoholic beverages while underway in a boat; picnic coolers or galley facilities are frequently available to store and serve alcoholic beverages; and, whether fishing, cruising, or sailing, there are lengthy periods of time when the boaters, including the operator, are not fully occupied. The slow speed of most boating activity, compared to operation of an automobile, and the relatively unconfined nature of most waterways have contributed to a lack of awareness of the risks involved. The educational effort has concentrated on making boaters aware that "Boating and alcohol don't mix."

The Coast Guard and National Transportation Safety Board have worked in concert with the various States and boating organizations to

address the alcohol problem. The National Safe Boating Council, Inc. with a volunteer membership of 39 organizations including the Coast Guard Auxiliary, U.S. Power Squadrons, American Red Cross, Boy Scouts, Girl Scouts, YMCA, other Federal agencies concerned with boating safety, and numerous manufacturer and boating organizations, sponsors National Safe Boating Week. For the past two years the theme of National Safe Boating Week has been "Be a responsible boat operator." The slogan used was "Think before you drink."

In addition to the educational efforts, the Coast Guard and the States have coordinated law enforcement efforts and have recommended improvements in boating safety laws, including laws directed towards intoxicated operators. At its meeting on October 3, 1984, the National Association of State Boating Law Administrators issued guidelines for State programs to attack the problem. These guidelines included suggestions for State laws.

For many years the Coast Guard has been enforcing statutes which prohibit the operation of a vessel in a negligent manner. The Motorboat Act of 1940 provided that no person shall operate a vessel in a reckless or negligent manner so as to endanger the life, limb, or property of any person. Under this section the word "negligent" has been held to mean failure to use that care which a reasonable man would exercise under similar circumstances. (U.S. v. Meckling, 141 F. Supp. 608, D. Md. 1956). The provisions were amended with the passage of the Federal Boat Safety Act of 1971 and criminal penalties were prescribed for a person who willfully violates the statute. The prohibition against negligent operation was continued with the codification of Subtitle II of Title 46 United States Code, Shipping, (Pub. L. 98–89, August 16, 1983). The prohibition against negligent operation is now contained in 46 U.S.C. 2302 (a) and (b).

The instructions to Coast Guard Boarding Officers concerning enforcement procedures of statutory prohibitions against negligent operation of vessels have contained provisions interpreting these prohibitions to include operating vessels while under the influence of alcohol or drugs, or other intoxicants, since May 14, 1960.

Section 7 of the Coast Guard Authorization Act of 1984 (CGAA), (Pub. L. 98–557 October 30, 1984), added specific emphasis on intoxicated operation of vessels to the existing statutes by adding paragraph (c) to 46 U.S.C. 2302 which provides that:

> An individual who is intoxicated when operating a vessel, as determined under standards prescribed by the Secretary by regulation, shall be—
>
> (1) Liable to the United States Government for civil penalty of not more than $1,000; or
>
> (2) Fined not more than $5,000, imprisoned for not more than one year, or both.

While the primary impetus for this amendment appears to have been to provide an enforcement tool to reduce the numbers of recreational vessel casualties due to intoxication, it applies to all vessels operated on waters subject to the jurisdiction of the United States (including foreign and domestic vessels used for recreation or in commercial service) and to all vessels that are owned in the United States while the vessel is on the high seas. It is noted that the penalties provided by this statute do not apply to a U.S. vessel while it is in the territorial waters of another country.

It is necessary to set a standard before any enforcement of 46 U.S.C. 2302(c) can take place. Implementation of 46 U.S.C. 2302 and its predecessor statutes has been delegated to the Coast Guard. It is the Coast Guard's position that, although the impetus for the 1984 amendment may have been related to the perceived abuse of alcohol, the statute is broad enough to include intoxication due to the ingestion of drugs. The Random House College Dictionary (1980) defines intoxicate as, "to affect temporarily with diminished control over the physical and mental powers, by means of an alcoholic liquor, a drug or other substance . . .". Certainly, the results of operating a vessel while intoxicated are the same regardless of the source of the impairment.

The Advance Notice of Proposed Rulemaking (ANPRM) solicited input on the establishment of a Federal standard by asking 12 questions. A total of 76 comments were received. Included in this number were comments from twelve recreational and commercial organizations and national boating interests, with memberships totaling in the millions of boaters. The National Transportation Safety Board also commented on all twelve questions, based on their research into accidents and accident prevention.

Discussion of Comments

The comments came from the following groups in the numbers noted.

25 Recreational boaters.
11 Commercial or licensed operators.
05 Recreational boating associations.
04 Commercial boating interests.
04 National boating interests.
06 State boating law administrators.
21 Individual boating interests.

Most of the comments did not address the specific questions posed in the ANPRM, but strongly supported having the Coast Guard also enforce the laws prohibiting intoxicated operation of a vessel. Some comments suggested additional intensive boating programs such as requiring operator licensing, evidence of boating safety and rules of the road knowledge for licensing or boat purchase, suspension of the license for offenses, and penalties, fines and imprisonment higher than the law currently allows. Although the comments did not clearly favor any specific approach, they overwhelmingly supported the Coast Guard taking strong action against intoxicated operators.

The following is a summary of the comments received to each question asked in the ANPRM. Many comments addressed only some of the questions.

Concerning Federal vs. State Standards for Recreational Vessels

Question. 1: Should the Federal Regulations promulgate a Federal standard for operating a vessel while intoxicated?

Thirty-seven comments responded to this question. Twenty-one were in favor of setting a Federal standard, five cited the variety of State laws and standards, three stated a Federal standard would provide incentive to the States, or could be a guide for uniformity in State laws, two stated the Coast Guard needs one standard for determining intoxication, one supported a tough Federal regulation because, in the individual's State, the recently enacted State law against drunk boating was only useable after an accident, not before. Eleven supported some Coast Guard, action, without favoring Federal or State standards, three supported the intent of the ANPRM. Five opposed a Federal standard, two asserting there are enough laws already, one asserted it was a State prerogative, one stated the Coast Guard should resist additional "social missions," and one recommended that State laws for operating motor vehicles should also be applied to boat owners.

Question 2: Should the Federal Regulations adopt State laws by reference, so that where a State has prescribed a standard for intoxication, Federal law would not conflict?

Eleven comments responded to this question. Six recommended the Coast Guard adopt State laws by reference, one stated this allowed flexibility as a State law may be revised, one stated Federal regulations should not conflict with State standards, where they exist, one asserted there are enough laws

already, one cautioned against discouraging State legislatures from the trend to set State standards, and one comment recommended providing a Federal standard only for States that has no standards, explaining that deference to the State legislatures and making it easy for boaters to comply with current standards outweighed the burden on the Coast Guard to train for more than one State's law. Five opposed adopting State laws by reference, four were concerned over the variety of States' laws, one emphasized the vagueness of some State laws and one explained that a recently enacated State law against drunk boating was only useable after an accident, not before.

Question 3: If State laws are adopted by reference, what Federal standard should apply on the high seas (33 CFR 2.05.1(a)) and on waters subject to the jurisdiction of the United States (33 CFR 2.05.30) but not of any State (i.e., Federal enclaves) or on waters located within National Parks (16 U.S.C. la.2(h)).

Eleven comments responded to this question. Seven supported a blood alcohol concentration (BAC) level standard, five favored the standard adopted by the majority of the States, .10 percent, two favored .04 percent BAC for all boats, recreational and commercial. One individual submitted two comments stating .04 to .10 percent BAC was too great a spread, and suggested using a national State standard average currently used for motor vehicles, i.e., .08 percent in Oregon. Two recommended applying a Federal standard in all areas, one recommended applying State standards, where they exist, to Federal waters, enclaves and National Parks within State boundaries. One recommended applying a Federal standard on the high seas, waters in National Parks and waters subject to U.S. jurisdiction, but not within a State. This last comment also recommended the Federal standard be based on behavior and demeanor.

Concerning Definition of "Intoxication" for Recreational Vessels

Question 1: Should any Federal rule specify a blood alcohol concentration (BAC) that would constitute presumptive evidence of intoxication? What level is appropriate? Should the Coast Guard adopt the BAC level adopted by a majority of the States for motor vehicle operation (i.e., .10 percent)?

Twenty-three comments responded to this question. Twenty-one favored a Federal rule specifying a BAC level, and one opposed a Federal rule asserting the standard for intoxication should remain a State prerogative. Two recommended .04 percent, one suggested .05 percent, the BAC level for motor vehicles in the State of New York, one suggested that .07 or .08 percent be more reasonable than the .10 percent for motor vehicles considering the compounding effects of dehydration and motion, one recommended .08 percent to reflect a lowering trend in State motor vehicle standards. One individual submitted two comments urging the Coast Guard to pick any one BAC standard, .04, .08 or .10 percent. Fourteen comments favored the .10 percent BAC level adopted by the majority of States with BAC standards. One comment advised the Coast Guard to also establish evidentiary requirements and procedures for chemical tests.

Question 2: Should a Federal rule be developed which would define a behavioral definition of intoxication? For example, "An individual may not operate or be in actual physical control of the movement of a vessel while under the influence of drugs or alcohol to a degree which impairs his or her physical or mental responses and activities."

Twelve comments responded to this question. Seven favored a Federal rule defining a behavioral standard, three suggesting the example language posed in the ANPRM, or very similar. One opposed a Federal rule defining a behavioral standard for drugs. Four opposed a Federal rule defining a behavioral standard for alcohol or drugs, three stating belief that conditions such as sea sickness, fatigue, hypothermia, etc. could simulate an intoxicated condition, two citing difficulty and cost of training Coast Guard personnel to become irrefutable diagnosticians, and two explaining it would require a boarding officer to exercise too much subjective judgment.

Question 3: Should a Federal rule include both a behavioral definition and BAC level?

Eight comments responded to this question. All eight favored combining BAC and behavioral standards into a Federal regulation, one also cautioning that it would require boarding officers to exercise too much subjective judgment.

Question 4: For a State that has only a behavioral definition, should there be a Federal BAC standard to supplement State law?

Five comments responded to this question. Four supported a Federal BAC standard to supplement a State which has only a behavioral standard. The fifth opposed having a Federal BAC level on the basis that establishing a standard of intoxication should remain a State prerogative.

Question 5: Should a Federal standard include drugs?

Fourteen comments responded to this question. All fourteen supported including drugs in any Federal standard, one cautioning the Coast Guard on the use of a behavioral standard for drugs, and one asserting there should be a level of intoxication standard for controlled substances similar to the BAC standard for alcohol.

Concerning Enforcement for Recreational Vessels

Question 1: Since the primary enforcement of boating laws is conducted by State and local agencies, what is the proper Coast Guard enforcement role? A determination must be made on the extent it is practical to combine this role with other Coast Guard law enforcement functions.

Twenty-four comments responded to this question. Eighteen supported active Coast Guard enforcement of intoxication laws, five acknowledging the primary role of State and local agencies, but emphasizing the need for Coast Guard boarding officers to have a tool of enforcement while conducting routine boardings. Three opposed active Coast Guard enforcement, one suggesting the Coast Guard leave enforcement to the States, except on the high seas or in situations arising from specific Coast Guard concerns, one asserting the Coast Guard should get out of pleasure boat regulations completely, permitting the States to exercise total jurisdiction over what is not a Federal matter, and one urging the Coast Guard to resist any more "social missions" and be more available for MAYDAY calls (Search and Rescue). One also suggested the Coast Guard differentiate between operating a vessel underway and moored.

Question 2: If testing for blood alcohol concentration (BAC) is adopted, how and under what circumstances should concentrations be measured? Who should administer the tests?

Seventeen comments responded to this question. Two suggested testing the operator when a boat is observed operating in an unsafe manner, two suggested testing an operator after an accident. Fourteen suggested that Coast Guard boarding officers conduct the testing, but disagreed on which tests to use, five emphasizing training qualification, and one specifying State certification. Two urged testing suspects at special centers on shore by physicians or other qualified persons under clinical conditions. Nine advocated administering a breath test and four advocated testing motor skills by the boarding officer, while two suggested conducting a breath test at a

shore station or medical center. Four suggested conducting blood tests at a medical center and two suggested conducting urine testing at a medical center.

Question 3: In a separate rulemaking, the Coast Guard is proposing that if a person operating a commercial vessel refuses to take a test for intoxication, the individual will be presumed to have been intoxicated for the purposes of any subsequent administrative proceeding. Should refusal of the operator of a recreational vessel to take a test be a separate violation of admission of intoxication?

Sixteen comments responded to this question. Six favored a refusal to submit to a test as an admission of intoxication, five favored refusal to submit to a test as a separate violation, and one suggested that refusal to submit to a test be noted in the citation as additional information. One emphasized the difficulty in enforcing implied consent without having required operator's licenses, one suggested the Coast Guard include an administrative appeal process to an automatic penalty assessment for refusal to submit to a test, and one cautioned that if refusal to take a breath or urine test were a rebuttable presumption of intoxication, considerable weight would have to be given to the sworn testimony of others on the boat about alcohol or drug abuse.

Question 4: Should testing for drug intoxication be conducted in the field? If so, how and under what circumstances should the drug presence and concentration be measured? Who should administer the tests?

Ten comments responded to this question. All ten favored Coast Guard personnel administering tests for drug intoxication, two cautioning the Coast Guard to wait until adequate testing equipment became available, two suggesting testing the suspect's motor skills, one suggesting testing suspects on the shore, one including testing suspects at a Coast Guard station as an alternative to testing at sea, and one favoring collecting blood or urine samples in the field for later forensic lab analysis. One suggested random tests on operators of vessels ready to leave the harbor, and one recommended urine tests on operators of boats observed operating unsafely.

Discussion of Proposed Rules

Proposed Federal Standard

The Coast Guard is proposing Federal standards to comply with the direction of Congress in its passage of the Coast Guard Authorization Act of 1984, Pub. L. 98–557. The act provides civil and criminal penalties for an individual who is intoxicated when operating a vessel, as determined under standards prescribed by the Secretary by regulation. The Federal standard proposed in this rulemaking would not pre-empt application of any State law. However, it is hoped that this proposal will encourage States to strengthen their boating safety laws. This was clearly the Congressional intent. The House of Representatives Report 98–631, March 22, 1984, prepared by the Committee on Merchant Marine and Fisheries stated that "the Committee recognizes that the primary responsibility for enforcing laws with respect to the operation of recreational vessels resides with State and local officials, not with the Coast Guard. This provision supplements, not pre-empts, State law." In his remarks concerning this legislation, the Honorable Gerald Studds stated that "this provision is important, in that it will demonstrate a determination on the part of Congress to encourage State governments to enact—and enforce—strong boating safety laws."

The Coast Guard has examined four approaches including taking no action, setting a Federal standard regardless of State standards, adopting State standards by reference, and setting a Federal standard that provides for the Federal standard to conform to a State BAC standard concerning intoxication, where enacted, on waters within the geographic boundaries of that State.

The first approach, taking no action, would defy the intent of Congress for the Secretary to prescribe standards by regulation under which an individual may be determined to be intoxicated, and was, therefore, rejected.

The second approach, setting a Federal standard regardless of State standards, was not the subject of a specific question is the ANPRM. The questions only addressed whether there should be a Federal standard and how that standard should relate to State laws. Although there was clear support for a Federal standard, there was no clear consensus on whether it should adopt or be independent of State laws. Coast Guard personnel cannot enforce a State law. There must be a Federal law or regulation to allow the Coast Guard to enforce a standard of intoxication. The Coast Guard Authorization Act of 1984 provides Federal law, but requires a Federal regulation to prescribe standards to implement the Federal law. Although setting an independent Federal standard would implement the statute, give a "tool" to Coast Guard law enforcement officers, and could be viewed as a guide to State legislatures, it may also conflict with certain States' laws. This conflict could confuse the public in those States where State legislatures enacted different standards. It may also dissuade State legislatures from strengthening their laws beyond the Federal standard. In deference to those State legislatures and in consideration of potential public confusion in complying with the laws, this approach was rejected.

The third approach, adopting State laws by reference, was the subject of a specific question in the ANPRM. As noted above, the comments responding to this question did not clearly support or reject this approach. Some comments cited State prerogative, avoidance of conflict with State laws and opposition to any new laws, while others cited difficulties caused by the variety of State standards, some of which are too vague to enforce.

A companion question to this approach in the ANPRM asked what Federal standard should be used on the high seas, Federal enclaves and waters in National Parks. Responses to this question were also mixed. Comments included applying a Federal standard in all areas, applying the laws of the State in which an area is located, and a combination approach, applying a Federal standard in those areas where a State standard did not exist. The adoption of State laws would give a "tool" to Coast Guard law enforcement officers and would eliminate conflicts. However, it would not meet the intent of Congress to encourage strengthening of State laws, particularly those that do not have defined standards for intoxication. The Coast Guard has considered this approach very carefully. Concern that the Coast Guard would be dealing with the laws of 50 States was tempered by the practical limitation that a given boarding officer would likely be involved only with two to four State jurisdictions. The exact position of the violation may also become a critical issue under that approach. However, the facts remain that some State laws are too vague to enforce, a district civil penalty hearing officer's jurisdiction may span as many as 22 States, and Coast Guard law enforcement training must be comprehensive enough to address any of the 50 State laws. In consideration of having too many "tools", or unuseable "tools" , and probable discouragement to State legislatures to improve their laws due to perceived acquiescence of the Coast Guard to the current disparity of State laws, including unenforceable laws, this approach was rejected.

The fourth approach, providing for the Federal regulation to conform to a

State's BAC standard on waters within the geographical boundaries of those States which have enacted a law with a BAC standard applicable to vessel operation, was developed after considering the comments responding to the ANPRM questions on the second and third approaches. This fourth approach complies with the intent of Congress to prescribe standards by regulation, provides a "tool" to the Coast Guard boarding officer that is useable wherever the Coast Guard has jurisdiction, and provides encouragement to State legislatures to enact stronger laws, without conflicting with those State legislatures which have enacted specific BAC standards concerning intoxication. The Coast Guard acknowledges that the States have primary enforcement responsibilities. However, as discussed below, where a State has no statutory BAC standard the Coast Guard is proposing a Federal standard to fill the gap. Prescribing a Federal standard which conforms to State BAC levels concerning intoxication, provides a useble "tool" for Coast Guard boarding officers, simplifies training Coast Guard personnel, and eases the burden on Coast Guard civil penalty hearing officers. This approach also relieves conflicts with States' laws and confusion for the recreational boaters by avoiding disparity between Federal and State BAC standards. In consideration of the above benefits, and in deference to the State legislatures which have enacted BAC standards concerning intoxication, the Coast Guard is proposing this approach.

Definition of "Intoxication" for Recreational Vessels

Defining "Intoxication" was the subject of a series of questions in the ANPRM. The questions asked whether a Federal rule should specify a BAC level that would constitute presumptive evidence of intoxication, specify a behavioral definition of intoxication, specify both a BAC level and behavioral standard, apply a Federal BAC level standard in waters of a State which has no State BAC standard, and whether to include drugs in a Federal standard.

An overwhelming number of comments responding to the question, whether a Federal rule should specify a BAC level, favored such a rule. Most of the comments recommended .10 percent BAC, the BAC level adopted by the majority of States with a BAC standard.

Currently, all of the States have laws which prohibit the operation of vessels while intoxicated. However, only 21 States define by statute blood alcohol concentration (BAC) for intoxication, or under the influence, which is applicable to vessel operation. However, the manner in which the statutory BAC levels are applied varies from State to State. Some States use the BAC level as a per se determination of intoxication. Other States use the BAC level as evidentiary rules to establish a presumption of intoxication or only provide evidence of intoxication. Also, the scope of applicability of the standards is not uniform. Some States' laws only apply to motorboats or "mechanically propelled vessels" while others apply to all vessels, as does the Federal statute. One State has a .08 percent BAC. One State has a .08 percent BAC as prima facie evidence of operating under the influence, and a .13 percent BAC as prima facie evidence for operating while intoxicated. The other 19 States apply, in some manner, a .10 percent BAC for measuring impairment due to alcohol. The setting of a Federal BAC level would not interfere with a State's ability to set and enforce a different standard on its waters. Setting a Federal BAC standard that conforms to the State scheme for any State having a BAC standard should not interfere with the States' prerogatives to set their own standards. Also, the Federal standard would not apply on any waters within the State that were solely subject to State jurisdiction. However, the Coast Guard does hope to encourage those States without BAC standards to enact more effective enforcement tools to deal with the problem of intoxicated vessel operators.

Therefore, the Coast Guard is proposing to prescribe .10 percent BAC as a Federal standard for vessels being used for recreational purposes, except that the Federal BAC standard will conform to a State statutory BAC standard on the waters within the geographical boundaries of that State. In order to deal with the various approaches used by States in applying BAC standards, the Coast Guard is proposing to follow the manner States apply their BAC standard as closely as possible, with the exception that the Federal standard will apply to all recreational vessles, even if the applicability of the state statute is limited to certain types of vessels. In a State that uses BAC as an evidentiary standard, the Federal standard will be an evidentiary standard. In a State that has duel standards, one for under the influence and one for intoxication, only the standard for intoxication will be used. In States that do not clearly establish a BAC level for intoxication the highest defined percentage of alcohol in the blood will be considered to be the prohibited level for the purpose of this regulation. For example, if the State statute establishes .08 BAC as ability impaired and .12 BAC as under the influence, the .12 BAC will be considered intoxicated for the purpose of the rule. Since 46 U.S.C. 2303 applies to all vessels, for Federal enforcement purposes the State BAC standard will be considered applicable to all types of recreational vessels within the State. Thus, in a State where the standard applies only to motorboats, for Federal enforcement purposes, that standard will apply to all vessels then being used for recreational purposes. This approach will leave States complete flexibility in establishing their own programs and allow for States to enact stronger statutes without requiring any modification to the Federal standard. Thus, if a trend develops among the States to change their BAC standard from .10 percent to .08 percent, the Coast Guard need only adjust its training program, not revise a regulation.

The majority of comments responding to the question, should a Federal rule include a behavioral standard, favored specifying such a standard. Those opposing specifying a behavioral standard expressed concern that conditions such as sea sickness, fatigue, hypothermia, etc., could simulate an intoxicated condition. Also, most of those opposed were concerned about the exercise of too much subjective judgment by the boarding officers.

Many States currently enforce intoxicated operation statutes through behavioral standards. There are many variations in the States' statutes defining intoxication in terms of observed behavior. The Coast Guard examined the possibility of adopting State behavioral standards. Many are the result of judicial interpretations of the State statutes. In view of the multitude of standards that the Coast Guard would encounter enforcing State laws including uncodified definitions, a Federal behavioral standard is being proposed. The Coast Guard is proposing that a person is intoxicated when "under the influence of an intoxicant to the degree that the effect of the intoxicant on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent to observation." This is based on the definition in section 4–2(14), Code of Virginia. This particular definition has been upheld by both the Virginia courts and Federal courts, which have also recognized that a behavioral definition and a blood alcohol level standard co-exist. See: United States v. Gholson, (319 F. Supp.

499, E.D. Va. 1970). This standard is less subjective than that suggested in the ANPRM.

All comments responding to the question, should the Federal rule include both a BAC standard and a behavioral standard supported the use of both standards. Also, all comments responding to the question, should a Federal standard include drugs, favored including drugs in the Federal standard of intoxication.

A behavioral standard, although less precise than a BAC standard, is essential for several reasons. First, in many instances, testing for blood alcohol concentration level may not be available within an acceptable time frame or the person may refuse to consent to the chemical test. Second, intoxication may be caused by drugs, or a combination of drugs and alcohol where the BAC level is not exceeded. In addition, while the proposed blood alcohol levels are statistically sound, there may be individuals with a susceptibility to alcohol or drug/alcohol combinations such that they are seriously impaired at levels lower than the proposed BAC standards. The behavioral standard may also be used as a measure of what constitutes reasonable cause to test a person for drugs or alcohol. Whatever the cause, the Coast Guard must have a standard in order to remove dangerously impaired operators from the navigable waters of the United States.

It must be stressed that the BAC and behavioral standards are independent of each other. A person may be tested and may not reach the threshold of .10 percent BAC, yet be intoxicated under the behavioral standard. In all cases where the behavioral standard is violated without violating the BAC levels, the behavioral standard will apply. In cases where the behavioral standard is not violated but the BAC standards are, the BAC standards will apply. Thus, the standards take into account a person's ability to "mask" intoxication or a person's susceptibility to intoxication. Either standard determines intoxication and constitutes a violation of 46 U.S.C. 2302(c).

Enforcement for Recreational Vessels

The House of Representatives Report 98–631, March 22, 1984, prepared by the Committee on Merchant Marine and Fisheries stated that "the Committee recognizes that the primary reponsibility for enforcing laws with respect to the operation of recreational vessels resides with State and local officials, not with the Coast Guard. This provision supplements, not pre-empts, State law." The Coast Guard acknowledges the States' primary role of enforcing boating laws. The Coast Guard asked a series of questions in the ANPRM to discern the public views on the Coast Guard's role, including the proper Coast Guard role, BAC test administration, use of test refusal as an admission of intoxication and drug testing administration.

Most of the comments responding to the question, what is the proper Coast Guard role, supported active Coast Guard enforcement of intoxication laws. A few opposed Coast Guard enforcement of intoxication laws. The Coast Guard's intent, and proposal, is to comply with Congressional mandate to prescribe standards by regulation, and to provide a "tool" to the Coast Guard boarding officers so they can take effective action when an intoxicated operator is encountered during search and rescue or law enforcement boardings. The Coast Guard intends to develop proper training and procure needed equipment to provide sufficiently trained and equipped boarding officers through existing agency training programs, acquisition procedures and policy directives.

The Coast Guard intends to mount an aggressive publicity campaign to notify all boaters that the standards needed to enforce the law have been prescribed and that the operator of any boat boarded after a search and rescue or stopped for a law enforcement boarding, may be subject to the boarding officer's determination of intoxication, as well. The publicity campaign for National Safe Boating Week is a good example. The Coast Guard hopes that boaters will heed the announcements that the intoxicated operation law is being enforced in greater numbers than those heeding the prior safety campaigns against drinking and boating.

In the NPRM published on May 23, 1986, the Coast Guard proposed that if a person operating a commercial vessel refuses to take a test for intoxication, the individual will be presumed to have been intoxicated for the purposes of any subsequent administrative proceeding. In the ANPRM for recreational vessels, the Coast Guard asked whether refusal of an operator of a recreational vessel to take a test should be a separate violation or admission of intoxication. All comments responding to this question favored the concept of required testing for recreation vessel operators, but split on whether refusal should be an admission of intoxication or a separate violation. The Coast Guard is proposing that refusal to submit to a test is presumptive evidence of intoxication.

In the ANPRM, the Coast Guard asked whether testing for drug intoxication should be conducted in the field, and, if so, when, how, and by whom. All ten comments responding to this question favored Coast Guard personnel testing for drug intoxication, but provided no clear direction on when or how. In consideration of the effectiveness of testing motor skills for alcohol or drugs conducted by State law enforcement officers, and the impracticality of obtaining blood or urine samples on-the-water, the Coast Guard is proposing to determine drug intoxication of operators based on behavioral standard, and at the discretion of the boarding officer, toxicological methods.

Defining "Operating a Vessel"

The requirement to be "operating a vessel" is essential for the imposition of civil or criminal penalties under 46 U.S.C. 2302(c).

For vessels subject to manning requirements, all members of the crew, pilots, and other persons standing watches are considered to be operating the vessel. Specifying who is "operating a vessel" by regulation is not feasible for recreational vessels and other vessels not subject to manning requirements, however, the proposed rule would limit the applicability of 46 U.S.C. 2302 to those individuals essential to the operation of the vessel. For a recreational motor vessel whose power and steering is controllable by a single person at a central location, that person is clearly the person operating the vessel. However, for a large recreational sailing vessel, which may have several persons assisting with the sails, the difference between operators and non-operators is difficult to distinguish. Thus, the determination of whether an individual is "operating a vessel" must be conducted on a case by case basis. For the majority of recreational vessels, the person at the vessel's helm and/or controlling the vessel's primary means of propulsion will be considered to be the person operating the vessel.

Supplemental Notice of Proposed Rulemaking for Commercial Operations and Licensed and Documented Personnel

The Coast Guard has issued a Notice of Proposed Rulemaking (NPRM) (CGD 84–099) in the **Federal Register** (May 23, 1986, 51 FR 18902) which proposes to add a new Part 95 to Title 33, Code of Federal Regulations. In that NPRM, the Coast Guard proposed rules concerning operating a vessel while intoxicated which affected commercial vessels and licensed mariners. Specifically, the Coast Guard proposed a BAC standard of .04 percent for operation of vessels

subject to the manning requirements of Part F of Subtitle II of Title 46 United States Code and a BAC standard of .10 percent for all other vessels in commercial operation. After consideration of the comments received in response to questions in an ANPRM published in the **Federal Register** on May 23, 1986, at 51 FR 18900, the Coast Guard is proposing an expansion of the rules proposed for commercial vessel operations to provide standards of intoxication that cover all vessels. In this Notice of Proposed Rulemaking (84–099A), the Coast Guard is proposing to apply a variable BAC standard to all vessels operated for recreational use. The .04 and .10 BAC standards originally proposed are continued; however, the material formerly in § 95.015 has been reorganized for clarity. The Coast Guard position is that a BAC standard above .10 percent for persons engaged in commercial operations is not desirable. Consideration was given to applying stricter BAC limits to these vessels when operating within the geographic limits of States having a lower statutory BAC standard. There is only one State that currently has a statutory BAC standard for intoxication that is below .10 percent. Regardless of the Federal standard, any State having a lower BAC standard can continue to enforce its law. In addition, in the Anti-Drug Abuse Act of 1986 (Pub. L. 99–570, Oct. 27, 1986) a BAC standard of .10 percent has been established for operators of "water common carriers." The Coast Guard is currently evaluating the effect of this statute on the standards proposed for commercial vessels. For these reasons, the standards originally proposed for commercial vessel operations have not been changed in this supplemental notice.

In the interest of clarity and public understanding, portions of the proposed Part 95 have been republished in this proposed rulemaking to put the changes in context.

Regulatory Evaluation

It has been determined that this rulemaking is not a major regulation under Executive Order 12291; however, this rule is considered significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, Feb. 26, 1979). A regulatory evaluation has been prepared for this action, and is contained in the regulatory docket. A copy may be obtained by contacting the Commandant (G–CMC/21) as indicated under "**ADDRESSES.**"

It is expected that this proposed rule will reduce the risk to the lives and safety of the boating public that is caused by intoxicated operation of vessels. The existence of the proposed rule should deter a person from operating a recreational vessel while intoxicated due to publicity that the law is now enforceable. Experience with mandatory seat belt laws and usage in 26 States is a corollary. In 1982, only 11 percent of drivers used seat belts while 89 percent went unprotected. In 1986, after a publicity campaign advised motorists of the mandatory seatbelt law and intended enforcement methods and penalties, the use of seat belts in those States rose noticeably to 34 percent (66 percent unprotected). In other words, the number of people who had previously elected to engage in unsafe behavior decreased 26 percent as a result of Federal and State action. If the Coast Guard regulations and publicity campaign achieved similar results, recreational boating accidents involving alcohol or drugs could be reduced by 26 percent. The benefits to society of such a reduction could be $30.6 million to $152.2 million. Experience with educational campaigns addressing intoxicated operation of motor vehicles has also shown reductions in accidents. An extensive education campaign and State BAC laws have reduced the number of intoxicated drivers involved in fatal accidents from 30 percent to 25 percent, a 16.7 percent reduction. A comparable reduction in recreational boating accidents involving alcohol or drugs could yield benefits to society of $19.6 million to $97.8 million. Although the exact number of accidents prevented cannot be accurately predicted, it is expected this proposal will reduce the number of casualties and cost to society. By either of the above cost reduction estimates, the benefit/cost ratio is very favorable. Moreover, if this regulation, as an opening wedge, can reduce recreational boating accident costs by just 1 percent, its benefits will have exceeded its modest costs. Compliance with these proposed rules will not impose any cost or burden on persons operating a recreational vessel except for those operators who regard denial of the privilege of enjoying "a few beers" as another example of "Big Brother's" heavy hand. The Coast Guard believes the probable benefits of reasonable limits on drinking far outweigh the burden imposed. It is also hoped that the proposed rule will encourage State legislatures to strengthen their present laws in this area.

Information on the number of casualties occurring in calendar year 1985 and reported to the Coast Guard is contained in Table 1. Ten percent of those reported casualties involved the use of alcohol or drugs. Various studies and State statistics indicate that the actual percentage of reportable accidents involving alcohol or drugs may be in the fifty to sixty percent range. An estimate of fifty percent of reportable accidents is being used in addition to ten percent of the reported accidents to present a clearer picture of the magnitude of the problem involving alcohol or drugs. The cost of property damage due to accidents is not difficult to calculate. Placing a value on human lives and injuries is much more complex. Most economists consider the value of a human life to be no less than one million dollars. Therefore, we have used this value for the purpose of this evaluation. The National Highway Traffic Safety Administration (NHTSA) publishes a report that considers loss of potential lifetime income, but not pain and suffering, to assess the cost to society for injuries due to motor vehicle accidents. The Coast Guard decided to use the NHTSA motor vehicle injury costs because of the lack of recreational boating injury costs data and a belief that injuries from boat accidents on the water are likely to be more severe.

TABLE 1.—SUMMARY OF REPORTED RECREATIONAL BOATING ACCIDENTS FOR 1985 AND ESTIMATED COSTS [1] TO SOCIETY ATTRIBUTABLE TO ALCOHOL AND DRUG USE

		Fatalities	Injuries	Damages
Reported accidents [2]	6,237	1,116	2,757	$20.0
Reported alcohol or drugs involved, 10%	624	112	276	$2.0
Estimated economic cost to society at 10%		$112.0	$3.5	
Estimated alcohol or drugs involved, 50%	3,118	558	1,878	$10.0
Estimated economic cost to society at 50%		$558.0	$17.5	
Percentage involving alcohol or drugs	10%	50%		

TABLE 1.—SUMMARY OF REPORTED RECREATIONAL BOATING ACCIDENTS FOR 1985 AND ESTIMATED COSTS [1] TO SOCIETY ATTRIBUTABLE TO ALCOHOL AND DRUG USE—Continued

		Fatalities	Injuries	Damages
Total cost to society	$117.5	$585.5	.....	.....

[1] All costs are in millions of dollars.
[2] All fatalities are reported to the Coast Guard; the total number of reportable accidents involving only injuries or property damage is estimated to be ten times greater than number of accident reports received.

Information on the anticipated administrative costs incurred by the Coast Guard to train and equip Coast Guard Boarding Officers to enforce the proposed rules and that attributable to Coast Guard Civil Penalty Hearing Officers reviewing cases involving operating while intoxicated citations are contained in Table 2.

TABLE 2.—SUMMARY OF COSTS [1] TO THE COAST GUARD TO ADMINISTER THE PROPOSED RULES FOR RECREATIONAL VESSELS

Annual cost of training Boarding Officers	$0.68
Annual cost of equipping Boarding Officers	0.47
One year cost of publicity campaign	0.10
Annual cost of reviewing intoxication cases [2] by Civil Penalty Hearing Officers (10% of cases)	0.07
Total administrative costs	1.32

[1] All costs are in millions of dollars.
[2] Costs are based on an estimated 10% increase in the civil penalty caseload.

All of the approaches considered, except for the "no action" approach will result in virtually the same administrative cost to the Coast Guard. The Coast Guard intends to determine whether an operator of a vessel is intoxicated while conducting a search and rescue of law enforcement boarding. The most significant factors controlling administrative costs are how many Coast Guard Boarding Officers the Coast Guard is able to train each year and whether each trainee is provided with a breath sensor upon course completion. The training costs reflect a mixture of retraining one-fourth of the currently qualified Boarding Officers annually for four years, retraining two Maritime Law Enforcement (MLE) instructors annually, and additional training for MLE students.

The proposed rules will have a favorable Benefit/Cost ratio if the costs to society due to recreational boating accidents involving alcohol or drugs are reduced by even a conservative 1.1 percent, or 0.2 percent using the 50 percent estimate of alcohol or drug involvement. Experience with mandatory seat belt laws and State BAC laws for motor vehicles shows a potential reduction of 16.7 to 26 percent. The "no action" approach will not add to training or administrative costs, and will not reduce boating accidents. Approaches two and four will reflect the same estimated training and administrative costs. Approach two may, however, discourage some States from efforts to strengthen their laws to further reduce intoxicated operation of recreational vessels, counteracting the reductions from the Coast Guard effort. Approach three will add a relatively small amount to training costs to incorporate background in the various State laws that a Boarding Officer may be using. However, the third approach is expected to be less effective than either the second or fourth approaches, due to some States not having either BAC or behavioral standards. Enforcement in those States that do not have a BAC standard or behavioral standard cannot be as effective.

Since these amendments have a minor cost impact and primarily apply to individuals rather than businesses or other small entities, the Coast Guard certifies under the Regulatory Flexibility Act (Pub. L. 96-354) that these amendments will not have significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 95

Marine safety, Vessels, Alcohol and alcoholic beverages, Drugs.

In consideration of the foregoing, the Coast Guard proposes to amend the previously proposed amendment to Title 33, Code of Federal Regulations, published in the **Federal Register** on May 23, 1986, at 51 FR 18902 as set forth below:

PART 95—OPERATING A VESSEL WHILE INTOXICATED

1. The authority for proposed Part 95 continues to read as follows.

Authority: 46 U.S.C. 2302, 3306, 7101, 7301, 7701 and 8105; 49 CFR 1.46(b).

2. In proposed Part 95, §§ 95.001 and 95.010 are republished, and in § 95.005, paragraph (a) is revised to read as follows.

§ 95.001 Purpose.

The purpose of this part is to establish intoxication standards under 46 U.S.C. 2302, which prohibits operation of a vessel while intoxicated, and to prescribe restrictions and responsibilities for personnel serving on vessels required to be manned by licensed, certificated, or documented personnel. This part does not pre-empt enforcement of state laws and regulations concerning operation of a vessel while intoxicated.

§ 95.005 Applicability.

(a) This part is applicable to all vessels (except those excluded by 46 U.S.C. 2109) operating on waters subject to the jurisdiction of the United States and vessels owned in the United States on the high seas. This includes foreign vessels operating on waters subject to the jurisdiction of the United States.

* * * * *

§ 95.010 Definition of terms used in this part.

"Alcohol" means any form or derivative of ethyl alcohol (ethanol).

"Controlled substance" has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR Part 1308).

"Drug" means any substance (other than alcohol) that has known mind or function-altering effects on a human subject, specifically including any psychoactive substance, and including, but not limited to, controlled substances.

"Intoxicant" means any form of alcohol or drug or combination thereof.

"Vessel owned in the United States" means any vessel documented or numbered under the laws of the United States; and, any vessel (owned by a citizen of the United States) that is not documented or numbered by any nation.

3. Sections 95.013 and 95.016 are added and proposed § 95.015 is revised to read as follows:

§ 95.013 Operating a Vessel.

For purposes of this part, an individual is considered to be operating a vessel when:

(a) The individual is a crewmember, pilot, or watchstander not a regular member of the crew, of a vessel subject to any manning requirement under Part F of Subtitle II of Title 46, United States Code.

(b) The individual has an essential role in the operation of a vessel not subject to the manning requirements of Part F of Subtitle II of Title 46, United States Code, including but not limited to navigation of the vessel and functioning of the vessel's propulsion system.

§ 95.015 Standard of Intoxication.

(a) An individual operating a vessel subject to any manning requirement under Part F of Subtitle II of Title 46, United States Code is intoxicated when:

(1) The individual has .04 percent by weight or more alcohol in the blood; or,

(2) The effect of the intoxicant on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent to observation.

(b) An individual operating a vessel that is not subject to any manning requirement under Part F of Subtitle II of Title 46, United States Code and is not then being used solely for recreational purposes, is intoxicated when:

(1) The individual has .10 percent by weight or more alcohol in the blood; or,

(2) The effect of the intoxicant on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent to observation.

(c) Except as provided in § 95.016, an individual operating a vessel then being used solely for recreational purposes and not subject to any manning requirement under Part F of Subtitle II of Title 46, United States Code is intoxicated when:

(1) The individual has .10 percent by weight or more alcohol in the blood; or,

(2) The effect of the intoxicant on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent to observation.

§ 95.016 Adoption of State Standards.

(a) This section applies to vessels when being used solely for recreational purposes within the geographical boundaries of a State, territory, or possession having a statute defining a percentage of alcohol in the blood for the purposes of establishing that a person operating a vessel is intoxicated or impaired due to alcohol.

(b) If the applicable State statute defining a percentage of alcohol in the blood standard for determining impairment due to alcohol uses the terms "under the influence", "operating while impaired", or equivalent terminology and does not separately define a percentage of alcohol in the blood for the purpose of establishing "intoxication," the standard containing the highest defined percentage of alcohol in the blood applies in lieu of the standard in § 95.015(c)(1). If the applicable State statute contains a standard specifically applicable to establishing intoxication, in addition to standards applicable to lesser degrees of impairment, the standard specifically applicable to establishing intoxication applies in lieu of the standard in § 95.015(c)(1).

(c) For the purposes of this Part, a standard established by State statute and adopted under this section is applicable to the operation of any vessel being operated for recreational purposes within the geographical boundaries of the State.

4. In proposed § 95.017, paragraphs (a) and (b) are republished and paragraph (c) is revised to read as follows.

§ 95.017 Determination of Intoxication.

(a) A determination of intoxication may be made by the following:

(1) Personal or reported observation of alcohol or drug use;

(2) Personal or reported observation of a person's manner, disposition, speech, muscular movement, general appearance or behavior; or,

(3) Toxicological methods including breath analysis, urine, or blood sample testing.

(b) Testing may be directed by a Coast Guard law enforcement officer, investigating officer, or any law enforcement officer authorized to obtain a test under State or local law. If an individual refuses to submit to or cooperate in the administration of a timely toxicological test, when directed by a law enforcement officer or investigating officer having reasonable basis for believing the individual to be intoxicated, evidence of the refusal is admissable in any administrative proceeding and the individual will be presumed to have been intoxicated.

(c) The master or person in charge of a commercial vessel or a vessel subject to the manning requirements of Part F of Subtitle II of Title 46, United States Code, in addition to those persons identified in paragraph (b) of this section, may direct such testing. Evidence of refusal to submit to or cooperate in the administration of a timely toxicological test is admissible in evidence in any administrative proceeding.

Dated: February 4, 1987.

P.A. Yost,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 87-2661 Filed 2-6-87; 8:45 am]

BILLING CODE 4910-14-M

Reader Aids

Federal Register

Vol. 52, No. 26

Monday, February 9, 1987

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-1184
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws 523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-5240
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

3101-3208.....2
3209-3392.....3
3393-3594.....4
3595-3782.....5
3783-3996.....6
3997-4124.....9

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5601 *(See* U.S. Trade Representative notice).....3523
5605.....3393
5606.....3783

Executive Orders:
12582.....3395

Administrative Orders:
Presidential Recommendations:
January 20, 1987.....3526

5 CFR

831.....3209, 3785
870.....3397
871.....3397
872.....3397
873.....3397
890.....3210, 3397

Proposed Rules:
735.....3251
890.....3816

7 CFR

51.....3399
271.....3402
272.....3402, 3410
273.....3402, 3410
275.....3402
276.....3402
402.....3213
403.....3213
405.....3213
409.....3213
410.....3213
411.....3213
413.....3213
414.....3213
415.....3213
416.....3213
417.....3213
418.....3213
419.....3213
420.....3213
421.....3213
422.....3213
423.....3213
424.....3213
425.....3213
427.....3213
428.....3213
429.....3213
430.....3213
431.....3213
432.....3213
433.....3213
435.....3213
436.....3213
437.....3213
438.....3213
439.....3213
440.....3213
441.....3213
442.....3213
443.....3213
444.....3213
445.....3213
446.....3213
447.....3213
448.....3213
449.....3213
450.....3213
451.....3213
907.....3214, 3411, 3787
908.....3411
910.....3787
929.....3411
1030.....3412
1032.....3215, 3412
1033.....3412
1036.....3412
1049.....3412
1050.....3412
1065.....3216
1079.....3216

Proposed Rules:
272.....3817
277.....3817
900.....3119
928.....3433
1011.....3251
1210.....3587
1240.....3101
1942.....3433

9 CFR

308.....3595
318.....3595
320.....3595
327.....3595
381.....3595

10 CFR

50.....3788

Proposed Rules:
2.....3442
50.....3121, 3822

12 CFR

207.....3217
220.....3217
221.....3217
224.....3217
563.....3207

Proposed Rules:
225.....3447
523.....3450
545.....3665
563.....3665, 3669
564.....3126

14 CFR

21.....3415

LIST OF PUBLIC LAWS

Last List February 3, 1987

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.R. 1/Pub. L. 100–4

Water Quality Act of 1987. (Feb. 4, 1987; 101 Stat. 7; 84 pages) Price: $2.50

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $595.00 domestic, $148.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, CHOICE, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$5.50	Jan. 1, 1986
3 (1985 Compilation and Parts 100 and 101)	14.00	[1] Jan. 1, 1986
4	11.00	Jan. 1, 1986
5 Parts:		
1-1199	18.00	Jan. 1, 1986
1200-End, 6 (6 Reserved)	6.50	Jan. 1, 1986
7 Parts:		
0-45	24.00	Jan. 1, 1986
46-51	16.00	Jan. 1, 1986
52	18.00	Jan. 1, 1986
53-209	14.00	Jan. 1, 1986
210-299	21.00	Jan. 1, 1986
300-399	11.00	Jan. 1, 1986
400-699	19.00	Jan. 1, 1986
700-899	17.00	Jan. 1, 1986
900-999	20.00	Jan. 1, 1986
1000-1059	12.00	Jan. 1, 1986
1060-1119	9.50	Jan. 1, 1986
1120-1199	8.50	Jan. 1, 1986
1200-1499	13.00	Jan. 1, 1986
1500-1899	7.00	Jan. 1, 1986
1900-1944	23.00	Jan. 1, 1986
1945-End	23.00	Jan. 1, 1986
8	7.00	Jan. 1, 1986
9 Parts:		
1-199	14.00	Jan. 1, 1986
200-End	14.00	Jan. 1, 1986
10 Parts:		
0-199	22.00	Jan. 1, 1986
200-399	13.00	Jan. 1, 1986
400-499	14.00	Jan. 1, 1986
500-End	23.00	Jan. 1, 1986
11	7.00	Jan. 1, 1986
12 Parts:		
1-199	8.50	Jan. 1, 1986
200-299	22.00	Jan. 1, 1986
300-499	13.00	Jan. 1, 1986
500-End	26.00	Jan. 1, 1986
13	19.00	Jan. 1, 1986
14 Parts:		
1-59	20.00	Jan. 1, 1986
60-139	19.00	Jan. 1, 1986
140-199	7.50	Jan. 1, 1986
200-1199	14.00	Jan. 1, 1986
1200-End	8.00	Jan. 1, 1986
15 Parts:		
0-299	7.00	Jan. 1, 1986
300-399	20.00	Jan. 1, 1986
400-End	15.00	Jan. 1, 1986

Title	Price	Revision Date
16 Parts:		
0-149	9.00	Jan. 1, 1986
150-999	10.00	Jan. 1, 1986
1000-End	18.00	Jan. 1, 1986
17 Parts:		
1-239	26.00	Apr. 1, 1986
240-End	19.00	Apr. 1, 1986
18 Parts:		
1-149	15.00	Apr. 1, 1986
150-399	25.00	Apr. 1, 1986
400-End	6.50	Apr. 1, 1986
19	29.00	Apr. 1, 1986
20 Parts:		
1-399	10.00	Apr. 1, 1986
400-499	22.00	Apr. 1, 1986
500-End	23.00	Apr. 1, 1986
21 Parts:		
1-99	12.00	Apr. 1, 1986
100-169	14.00	Apr. 1, 1986
170-199	16.00	Apr. 1, 1986
200-299	6.00	Apr. 1, 1986
300-499	25.00	Apr. 1, 1986
500-599	21.00	Apr. 1, 1986
600-799	7.50	Apr. 1, 1986
800-1299	13.00	Apr. 1, 1986
1300-End	6.50	Apr. 1, 1986
22	28.00	Apr. 1, 1986
23	17.00	Apr. 1, 1986
24 Parts:		
0-199	15.00	Apr. 1, 1986
200-499	24.00	Apr. 1, 1986
500-699	8.50	Apr. 1, 1986
700-1699	17.00	Apr. 1, 1986
1700-End	12.00	Apr. 1, 1986
25	24.00	Apr. 1, 1986
26 Parts:		
§§ 1.0-1.169	29.00	Apr. 1, 1986
§§ 1.170-1.300	16.00	Apr. 1, 1986
§§ 1.301-1.400	13.00	Apr. 1, 1986
§§ 1.401-1.500	20.00	Apr. 1, 1986
§§ 1.501-1.640	15.00	Apr. 1, 1986
§§ 1.641-1.850	16.00	Apr. 1, 1986
§§ 1.851-1.1200	29.00	Apr. 1, 1986
§§ 1.1201-End	29.00	Apr. 1, 1986
2-29	19.00	Apr. 1, 1986
30-39	13.00	Apr. 1, 1986
40-299	25.00	Apr. 1, 1986
300-499	14.00	Apr. 1, 1986
500-599	8.00	[2] Apr. 1, 1980
600-End	4.75	Apr. 1, 1986
27 Parts:		
1-199	20.00	Apr. 1, 1986
200-End	14.00	Apr. 1, 1986
28	21.00	July 1, 1986
29 Parts:		
0-99	16.00	July 1, 1986
100-499	7.00	July 1, 1986
500-899	24.00	July 1, 1986
900-1899	9.00	July 1, 1986
1900-1910	27.00	July 1, 1986
1911-1919	5.50	[3] July 1, 1984
1920-End	29.00	July 1, 1986
30 Parts:		
0-199	16.00	[4] July 1, 1985
200-699	8.50	July 1, 1986
700-End	17.00	July 1, 1986
31 Parts:		
0-199	11.00	July 1, 1986
200-End	16.00	July 1, 1986

Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	15.00	[5] July 1, 1984
1–39, Vol. II	19.00	[5] July 1, 1984
1–39, Vol. III	18.00	[5] July 1, 1984
1–189	17.00	July 1, 1986
190–399	23.00	July 1, 1986
400–629	21.00	July 1, 1986
630–699	13.00	July 1, 1986
700–799	15.00	July 1, 1986
800–End	16.00	July 1, 1986
33 Parts:		
1–199	27.00	July 1, 1986
200–End	18.00	July 1, 1986
34 Parts:		
1–299	20.00	July 1, 1986
300–399	11.00	July 1, 1986
400–End	25.00	July 1, 1986
35	9.50	July 1, 1986
36 Parts:		
1–199	12.00	July 1, 1986
200–End	19.00	July 1, 1986
37	12.00	July 1, 1986
38 Parts:		
0–17	21.00	July 1, 1986
18–End	15.00	July 1, 1986
39	12.00	July 1, 1986
40 Parts:		
1–51	21.00	July 1, 1986
52	27.00	July 1, 1986
53–60	23.00	July 1, 1986
61–80	10.00	July 1, 1986
81–99	25.00	July 1, 1986
100–149	23.00	July 1, 1986
150–189	21.00	July 1, 1986
190–399	27.00	July 1, 1986
400–424	22.00	July 1, 1986
425–699	24.00	July 1, 1986
700–End	24.00	July 1, 1986
41 Chapters:		
1, 1–1 to 1–10	13.00	[6] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[6] July 1, 1984
3–6	14.00	[6] July 1, 1984
7	6.00	[6] July 1, 1984
8	4.50	[6] July 1, 1984
9	13.00	[6] July 1, 1984
10–17	9.50	[6] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[6] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[6] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[6] July 1, 1984
19–100	13.00	[6] July 1, 1984
1–100	9.50	July 1, 1986
101	23.00	July 1, 1986
102–200	12.00	July 1, 1986
201–End	7.50	July 1, 1986
42 Parts:		
1–60	15.00	Oct. 1, 1986
61–399	10.00	Oct. 1, 1986
400–429	20.00	Oct. 1, 1986
430–End	15.00	Oct. 1, 1986
43 Parts:		
1–999	14.00	Oct. 1, 1986
1000–3999	24.00	Oct. 1, 1986
4000–End	11.00	Oct. 1, 1986
44	17.00	Oct. 1, 1986
45 Parts:		
1–199	10.00	Oct. 1, 1985
200–499	9.00	Oct. 1, 1986
500–1199	18.00	Oct. 1, 1986
1200–End	13.00	Oct. 1, 1986
46 Parts:		
1–40	13.00	Oct. 1, 1986
41–69	13.00	Oct. 1, 1986
70–89	7.00	Oct. 1, 1986
90–139	11.00	Oct. 1, 1986
140–155	8.50	[7] Oct. 1, 1985
156–165	14.00	Oct. 1, 1986
166–199	13.00	Oct. 1, 1986
200–499	19.00	Oct. 1, 1986
500–End	9.50	Oct. 1, 1986
47 Parts:		
0–19	17.00	Oct. 1, 1986
20–39	18.00	Oct. 1, 1986
40–69	11.00	Oct. 1, 1986
70–79	13.00	Oct. 1, 1985
80–End	20.00	Oct. 1, 1986
48 Chapters:		
1 (Parts 1–51)	21.00	Oct. 1, 1986
1 (Parts 52–99)	16.00	Oct. 1, 1986
2	15.00	Oct. 1, 1985
*3–6	17.00	Oct. 1, 1986
7–14	23.00	Oct. 1, 1986
15–End	22.00	Oct. 1, 1986
49 Parts:		
1–99	10.00	Oct. 1, 1986
100–177	24.00	Oct. 1, 1986
178–199	19.00	Oct. 1, 1986
200–399	17.00	Oct. 1, 1986
400–999	21.00	Oct. 1, 1986
1000–1199	17.00	Oct. 1, 1986
1200–End	17.00	Oct. 1, 1986
50 Parts:		
1–199	15.00	Oct. 1, 1986
200–End	25.00	Oct. 1, 1986
CFR Index and Findings Aids	21.00	Jan. 1, 1986
Complete 1987 CFR set	595.00	1987
Microfiche CFR Edition:		
Complete set (one-time mailing)	155.00	1983
Complete set (one-time mailing)	125.00	1984
Complete set (one-time mailing)	115.00	1985
Subscription (mailed as issued)	185.00	1986
Subscription (mailed as issued)	185.00	1987
Individual copies	3.75	1987

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1986. The CFR volume issued as of Apr. 1, 1980, should be retained.

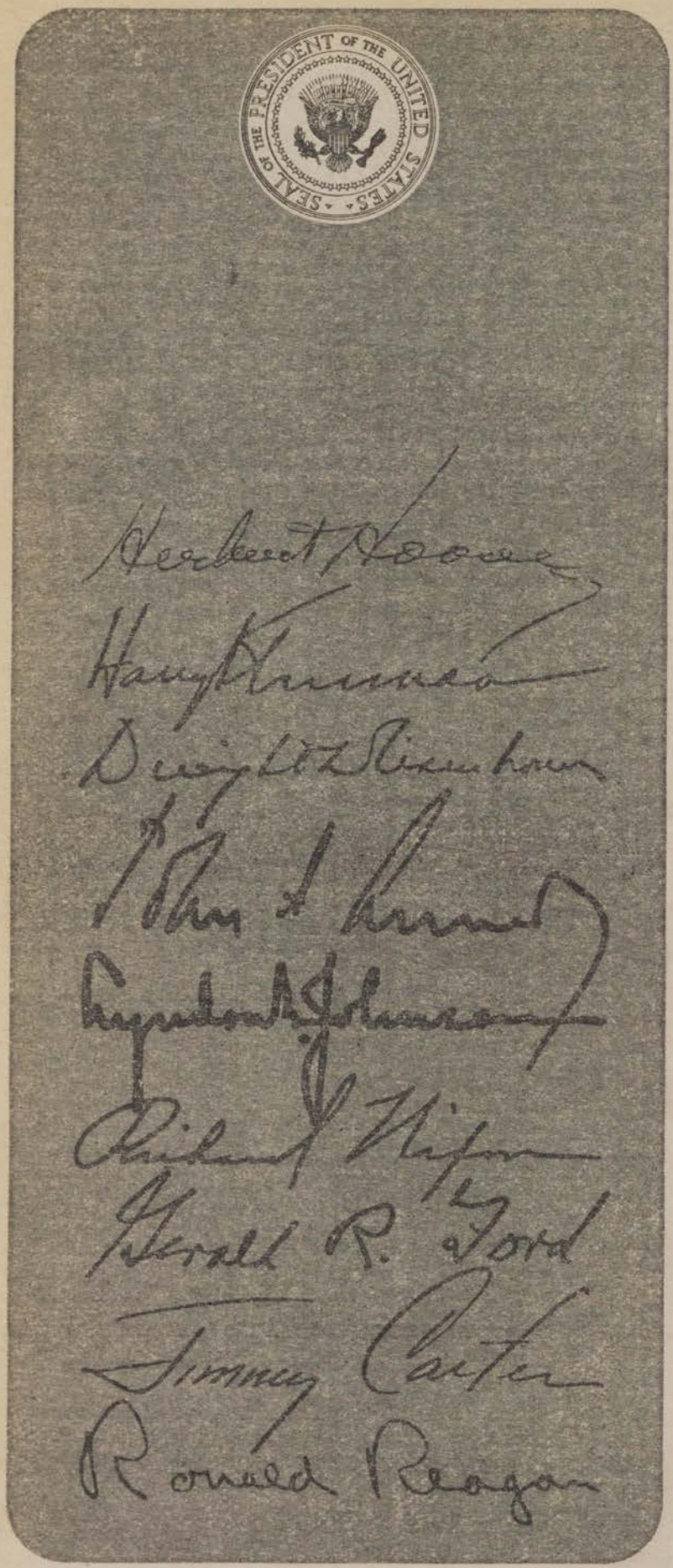
[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[7] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.



Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House.

Volumes for the following years are available; other volumes not listed are out of print.

Herbert Hoover

1930 ..... $19.00
1931 ..... $20.00
1932–33 ..... $24.00
Proclamations & Executive Orders—March 4, 1929 to March 4, 1933
2 Volume set $32.00

Harry Truman

1947 ..... $17.00
1950 ..... $19.00
1952–53 ..... $24.00

Dwight D. Eisenhower

1954 ..... $23.00
1955 ..... $20.00

Lyndon B. Johnson

1963–64
(Book I) $21.00
1968–69
(Book I) $20.00
1968–69
(Book I) $19.00

Richard Nixon

1974 ..... $18.00

Gerald R. Ford

1974 ..... $19.00
1975
(Book I) $22.00
1975
(Book II) $22.00
1976–77
(Book I) $23.00
1976–77
(Book III) $22.00

Jimmy Carter

1977
(Book I) $23.00
1977
(Book II) $22.00
1978
(Book I) $24.00
1978
(Book II) $25.00
1979
(Book I) $24.00
1979
(Book II) $24.00
1980–81
(Book I) $21.00
1980–81
(Book II) $22.00
1980–81
(Book III) $24.00

Ronald Reagan

1981 ..... $25.00
1982
(Book II) $25.00
1983
(Book I) $31.00
1983
(Book II) $32.00

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

(Rev. 7–1–88)